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The Solicitors' Journal

VOL. LXXX. **Saturday, February 22, 1936.** No. 8

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Current Topics.

Electoral Disqualification of Peers.

WHILE the purely political aspect of the proposal brought before the House of Lords last week by LORD PONSONBY that "all peers of the realm be entitled to record their votes for the election of members of the House of Commons House of Parliament, and that all peers of the realm be entitled to offer themselves for election to the House of Commons, provided that, during his membership of that House, no peer shall have the right to sit and vote in the House of Lords," is outside the purview of this journal, in the eyes of the constitutional lawyer, the whole subject is so full of anomalies that the proposal, which, it may be recalled, was defeated, naturally has an interest. For example, there is the curious position of the Scots and Irish peerage, and the different attitude adopted to these respectively, which seems to call for some reform. At the moment, the representative peers of Ireland are becoming reduced in numbers, no machinery being available for their reinforcement, but there has been nothing to prevent an Irish peer, who was not elected as a representative peer, being elected to the House of Commons for a constituency in Great Britain. LORD PALMERSTON was a notable instance of a non-representative Irish peer sitting for an English constituency. On the other hand, of the members of the Scots peerage, only those who are elected as representative peers can sit in the Upper House; the others have no parliamentary voice, not being entitled to sit in the House of Lords, and being precluded as peers from exercising the parliamentary franchise or standing as candidates for the House of Commons. At least, it might seem equitable to place the Scots peers on an equality with their Irish brethren, and so render them, like the latter, capable for sitting in the House of Commons. As someone had said, under the present law and custom, these Scots peers have, in this connection, to be collocated with prisoners and lunatics.

Dominion Appeals to the Privy Council.

THE Judicial Committee's decisions in *British Coal Corporation* v. *The King* [1935] A.C. 500, and in *Moore* v. *Attorney-General for the Irish Free State* [1935] A.C. 484, establishing the right, as regards Canada, to abolish appeal by special leave from Canadian courts in criminal cases, and, as regards the Free State, the right of appeal from the Supreme Court in all cases, have doubtless been noted and considered in the other Dominions in view of the possibility of the like withdrawal of appellate rights in their case also. The question has in fact been considered in South Africa when General SMUTS, as Minister of Justice, made it clear that the matter was not one to be considered from the constitutional point of view, but was to be regarded solely as affecting the administration of justice in South Africa. Truly enough he said that the Judicial Committee was unversed in Roman-Dutch law in the same way as were the judges of the Dominion, and the further question had to be borne in mind of the hardship on poor litigants by their wealthy opponents using the right of appeal. On these grounds, which seem certainly reasonable, the Dominion government considered that the disadvantages of retaining the right of appeal were greater than the advantages. At the same time the General gave the assurance that the government would be no party to a fruitless constitutional wrangle on the subject. Since the enactment of the Statute of Westminster we in this country must of course recognise that the determining voice for or against retention of the right of appeal rests with the Dominions, and although we may indulge a sentimental regret if they all snap the golden link, as LORD ROSEBERY once termed it, which connected in this practical fashion the Empire overseas with the mother country, we have to acknowledge that sentiment may have to give place to more prosaic reasons. From India it is likely that such appeals will still come for many years. In the past Indians regarded, and no doubt they still regard, the Judicial Committee with a feeling akin to reverence, as was shown in the incident told of the natives in a remote part of the dependency being found offering sacrifices to a far-off and all-powerful god who had restored to them the land of which government officials had deprived them, and on being asked the name of the deity to whom their oblations were being offered, they replied: "We know nothing of him but that he is a good god, and that his name is the Judicial Committee of the Privy Council."

The Prevention of Crime.

THAT the taking of precautions authorised by statute for the prevention of crime may at times involve serious inconvenience to innocent or, at least, unconvicted people is illustrated by a question recently asked in the House of Commons by Mr. DAY, in which it was suggested that a committee might be set up to inquire into the powers of arrest under the Prevention of Crimes Act, with the object of introducing legislation to limit powers of arrest, and so to prevent unnecessary loss of liberty of innocent persons. In the course of his reply, the Home Secretary indicated that the number of suspected persons charged in 1935 with loitering

with intent to commit felony in the Metropolitan Police District was 3,672, and that 2,439 of these were convicted. The first duty of the police, Sir JOHN SIMON said, was to prevent crime, and their experience was that a large number of crimes had, in fact, been prevented by the use of the statutory provisions in question. The fact that in a proportion of these cases the court did not regard the evidence as sufficient to warrant a conviction did not, it was urged, mean that the police were wrong in bringing the case before the court; reference being made to the fact that in many cases the magistrates, when dismissing a charge, have made it clear that in their view the police were justified in bringing the defendant before the court. "While I do not consider," Sir JOHN continued (we quote from *The Times*), "that there is sufficient ground for an inquiry such as is suggested by the hon. member, at the same time I recognise that constant vigilance must be exercised to guard against any improper use of these provisions, and the Commissioner, with whom I have been in consultation, is fully conscious of the importance of this point. Constant watch is kept by the authorities at Scotland Yard over these cases, and great care is being taken to prevent any misuse of these provisions." That good law may, and often does, work hardship in some cases is generally recognised. The statutory provisions in question would appear to provide an example of this proposition, and, so long as they are properly and fairly operated, their retention must be regarded as fully justified.

Coroners' Inquests: Criticism of the Report.

THE report of the Departmental Committee on the Law and Practice relating to Coroners, which formed the subject of a short article and a "Current Topic" in our last issue, has not escaped a good deal of criticism at the hands of those affected. It is not our purpose to comment at this stage upon the justice or otherwise of these strictures. At present it will be sufficient briefly to put them upon record. At a recent meeting of the Association of London Coroners it was urged that revocation of a coroner's power to name a person guilty of murder, manslaughter or infanticide, and to commit for trial on these offences would rob inquiries of much of their present importance. Indeed, the feeling of members appears to have been that an inquest would be practically useless unless the coroner had power to act where the responsibility for a death had been established beyond a reasonable doubt. With regard to the recommendation that in future only barristers or solicitors should be appointed coroners, it was agreed that it would be a grave mistake and highly undesirable if doctors were ineligible. Medical qualifications were important in making appointments, as a medical man sitting as coroner could, it was alleged, more easily than a barrister or a solicitor, understand evidence of the extremely technical nature often given by doctors. The value of verdicts of exoneration was recently alluded to by Mr. T. STUART RODGER, the Manchester County Coroner, although his remarks were not in terms confined to this point. He said, according to a report in *The Times*: "Recently I dealt with a case of an old person with a cataract suddenly diving in front of a commercial van driven by a young man of twenty-four. This driver was pale and haggard and evidently in mental distress, and this was only relieved by the jury assuring him that they attached no blame whatever to him. He was afraid of losing his position, and I deemed it right to send a message to his employers setting out the jury's findings." The views of the Council of the Institute of Journalists which naturally relate to the suggested restriction of the scope of Press reports in suicide cases were indicated in an excerpt from *The Times* which was set out on p. 132 in our last issue. In this connection the following statement by Sir SAMUEL BRIGHOUSE, the South-West Lancashire coroner, is of interest. "I have," he said, "this experience in fifty-two years of the press—that with many temptations to be theatrical and go in for headlines the press have exercised a very wise discretion in the reports of my inquiries. The press can be trusted, because if they or myself do wrong the community will soon criticise us. I see no reason why there should have been a Departmental Committee or a report." Publicity, Sir SAMUEL stated, sometimes assisted justice, and what went on behind closed doors did not commend itself to him as a coroner or as a member of the public.

Third Party and Employers' Liability Insurance.

THE recent announcement made in the House of Commons by the President of the Board of Trade, in answer to a question whether, in view of the legal obligation to insure against third-party and employers' liability risks, he would institute an inquiry into the law governing the carrying on of the business of such compulsory insurance, that a Departmental Committee is to be appointed will be generally welcomed. The terms of reference are "To consider and report whether any, and if so, what, changes in the existing law relating to the carrying on of the business of insurance are desirable in the light of statutory provisions relating to compulsory insurance against third-party risks and by employers against liability to their workmen." The representative character of the committee will be clear from the following list of members:—Sir FELIX CASSEL, Chairman, formerly a member of the House of Commons and lately Judge Advocate-General to the Forces; Mr. S. J. AUBREY, late Chairman of Lloyd's; Captain H. BALFOUR, M.P.; Mr. F. H. E. BRANSON; Mr. E. C. DAVIES, M.P.; Mr. G. S. W. EPPS, Deputy Government Actuary; Mr. C. HENDRY, Chairman of the British Insurance Association; Sir CHARLES HIPWOOD, formerly Second Secretary to the Board of Trade; Sir P. MACKINNON, formerly Chairman of Lloyd's; Mr. R. E. MARGETTS, General Manager of the Monmouthshire and South Wales Employers' Mutual Indemnity Association, Ltd.; Mr. E. H. S. MARKER, Comptroller of the Companies Department of the Board of Trade; Lieutenant-Colonel MOORE-BRABAZON, M.P.; Mr. W. W. OTTER-BARRY, Deputy-Chairman of the British Insurance Association; Mr. A. R. REED, Chairman and Managing Director of Albert E. Reed & Co. Ltd.; and Mr. W. R. SMITH, formerly Parliamentary Secretary to the Board of Trade.

Property Owners and Empty Property Rating.

AT a recent meeting of the National Federation of Property Owners and Ratepayers a resolution condemning the proposal of the London County Council to rate unoccupied property up to 25 per cent. of the rateable value was unanimously adopted. In submitting the resolution Mr. E. J. CHURCHMAN emphasised the distinction between the 50 per cent. empty City rate entailing a charge on unoccupied property of 6½d. in the £ and the rate now proposed which, on an average, may amount to something over 3s. 6d. in the £, the difference, of course, being explained by the fact that the City rate of 1s. 1d. in the £ covers only a few services. The speaker countered the argument derived from the existing practice of rating empty property in Scotland by stating that Scotland had been trying for many years to get the system altered to conform to the English system. In this connection it may be noted that the conference adopted a resolution proposed by the National Federation of Property Owners and Factors of Scotland condemning the Scottish system of rating imposed upon both owners and occupiers of property, and calling on the government to take immediate steps to assimilate the systems of rating in England and Scotland. Reverting to the former resolution, it was stated in regard to the argument that property was being held up high by owners to get increased rent that there was throughout the country a considerable amount of property, such as old houses, which was practically unlettable. It was admitted that empty properties receive the benefit of local services such as lighting, police, and road maintenance, and that property would suffer if these were not available;

but, the speaker urged, they could not be withdrawn, and the cost of them, if worked out and applied to unoccupied property, would be negligible. The proposal, if adopted, would, it was stated, have a deterrent effect on building by private enterprise, would destroy the value of mortgages, and would depreciate the rateable value of all property.

Rural Water Supplies.

THE fact that more than 4,000 copies of the "Memorandum on Bacteriological Examination of Water Supplies," issued by the Ministry of Health in May, 1934, have been disposed of, may be regarded as symptomatic of recently increased interest in the subject, while concern with the rural aspect of the problem, which has received some attention in this column, is well illustrated by the fact that the cost of rural water schemes for which loans have been sanctioned by the Ministry of Health during the current financial year has already reached a total of some £2,040,000. This, it is pointed out in the course of a recent statement, is exactly double the corresponding figure for the whole of the financial year 1934–5, which was itself the largest amount ever sanctioned in any one year for this purpose. In March, 1934, a grant of £1,000,000 was rendered available for the purpose of rural supplies. Some £530,000 of this amount has been provisionally allocated to assist schemes in 1,700 rural parishes in England and Wales. The total cost of the schemes to be so assisted is over £5,150,000. During the same period, the Ministry has in addition sanctioned the borrowing by rural authorities of over £1,200,000 for rural water supply schemes which are not being assisted by government grant. The usefulness of the Ministry's memorandum is unquestionable. Favourable comments have, it is stated, been received from bacteriologists and water analysts both at home and abroad. No serious objection has been raised to any point of practice, while the section on interpretation of results, which was regarded as the portion most open to controversial views, has met with general acceptance. The reprint of the memorandum—No. 71 of the Reports on Public Health and Medical Subjects (H.M. Stationery Office, 1s. 3d. net)—contains a number of minor modifications of the earlier publication, and, it is stated, may be relied upon as representing a satisfactory standard of practice. But the Ministry of Health will welcome proposals from water bacteriologists by private communication or by publication in scientific journals for amendments or additions capable of being adopted when a complete revision of the report and an issue of a new edition is required.

Public-House and Public Place.

A POINT of some interest was raised at the Old Street Police Court in a recent summons, where it was alleged that certain licensed premises were unlawfully kept for public musical entertainment without a licence for the purpose from the London County Council, whereby the licensee had become liable to the penalty under s. 16 of the London County Council (General Powers) Act, 1915. Evidence for the prosecution was given that in the saloon bar a woman was found playing a piano and a man in evening dress singing songs. On another occasion a man was wearing a Russian blouse and was singing songs at a piano. The importance of the case in view of the thousands of small public-houses all over the country where pianos are played by pianists or some mechanical means for singing and choruses was indicated for the defence. Why, it was urged, should not the working man sing? It was done all over the country, and they had no licence at all, and why should they have them? The summons was dismissed on the ground that a public-house is not a public place to the extent that a member of the public could demand entry as if it were an hotel. It was intimated for the London County Council that in all probability a request would be made for a case to be stated. The case was reported in *The Times* of 24th January.

Poor Persons Procedure.

As recorded in our last issue, The Law Society, in the course of its report on Poor Persons Procedure, suggested that, having regard to the fact that certain poor persons appear to be under the impression that the work done for them is paid for by the State, solicitors would be encouraged in what is often an uncongenial and thankless task if judges were more frequently to express their appreciation for what is done for these persons. Such expression of appreciation does not often find its way into the public press, and it is therefore of particular interest to put on record from last Saturday's *Times* the following statement by the President of the Probate, Divorce and Admiralty Division of the High Court of Justice. The learned President expressed himself as having been impressed during the past two years by the enormous social service that had been rendered by the Poor Persons Procedure. "It is no exaggeration to say," he stated, "that thousands of cases are dealt with in a way which would be quite impossible if persons had to meet the expense themselves. It is impossible, therefore, to exaggerate the social importance of that work."

Recent Decisions.

IN *Weigall* v. *Westminster Hospital* (p. 146 of this issue), the Court of Appeal upheld a decision of HORRIDGE, J., who held that the plaintiff was entitled to damages in respect of personal injuries sustained as a result of slipping on a mat which had been placed over a highly polished floor in a hospital room to which she went in order to see a consulting surgeon about her son. The decision was reported in our issue of 27th July last (79 SOL. J. 560).

In *Kenyon* v. *Darwen Cotton Manufacturing Co. Ltd.* (p. 147 of this issue), the Court of Appeal reversed a decision of the Blackburn County Court and held that deductions made from the wages of an employee made in order to pay for shares of the defendant company were void under the Truck Acts, and that the plaintiff was entitled to the amount so deducted. For this purpose it was immaterial whether the employee was handed the net amount of her wages after deduction or whether she was handed loose coins equivalent to the amount of the wages after deduction together with an envelope containing loose coins equivalent to the amount due on the shares, the latter being given back with its contents to a clerk in exchange for a receipt. It was established before the county court judge as a fact that the plaintiff owed the continuance of her employment to the signature of her application for shares, and the request that these should be paid for by deduction of small weekly sums from her wages.

In *John Lane the Bodley Head Ltd. and Another* v. *Associated Newspapers Ltd. and Another* (*The Times*, 15th February), it was held that s. 8 of the Copyright Act, 1911, afforded no defence in a case in which a short story submitted and printed was founded upon and reproduced a considerable portion of a short story in which copyright subsisted, notwithstanding that the defendants were unaware of the fact. The position of the defendants, DU PARCQ, J., intimated, was no better than it would have been if the manuscript submitted to them had been a literal transcript of the original story. Following *Sutherland Publishing Co. Ltd.* v. *Caxton Publishing Co. Ltd.* (referred to in this column at p. 119 of our last issue) damages were awarded under s. 6 as well as under s. 7 of the Copyright Act, 1911.

WE are indebted to the respondents' solicitors for pointing out an error which crept into our note of the decision in *Nicholls* v. *Ely Beet Sugar Factory Ltd.*, in this column last week. Damages were assessed at £50 by the learned Master of the Rolls, who rejected the view of CLAUSON, J., that pecuniary damages must be proved, but were not awarded as the plaintiff had failed to prove that his fish were killed by the defendant. The matter is correctly set out in our report on p. 127 of last week's issue.

Criminal and Civil Negligence.

WHATEVER the law might have been, it is now far too late to question the existence in practice of a distinction between what are compendiously called criminal and civil negligence. This distinction is of great importance, and it may therefore be convenient briefly to examine its history and development.

In *Blyth* v. *Birmingham Waterworks Co.* (1856), 11 Ex. 781, Alderson, B., at p. 784, said: "Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do." Sir John Salmond, in his book on Torts, 7th ed., at p. 23, was explaining this definition when he described negligence as "conduct unaccompanied by that anxious consideration of consequences which is called care," though he was laying stress on the mental attitude of the wrongdoer and never admitted that there could be negligence apart from such a state of mind, still less that negligence could ever be a specific tort. He regarded this state of mind as an essential condition precedent to liability for certain torts. The law, however, as it is applied in the courts to-day, unquestionably recognises an "action of negligence." "In strict legal analysis, negligence means more than heedless or careless conduct, whether in omission or commission: it properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing": thus, Lord Wright, in *Lochgelly Iron and Coal Co.* v. *M'Mullan* [1934] A.C. 1, at p. 25. Starting from this conception of negligence, it is interesting to see how the two categories of negligence have come to exist.

It has sometimes been said that negligence, to be criminal, must be "culpable" or "gross" (see the collection of adjectives made by Lord Hewart, C.J., in *R.* v. *Bateman* (1925), 19 Cr. App. R. 8, at p. 11). It is reasonably clear, however, if we examine the authorities, that to distinguish between negligence with and without one of these adjectives is to recognise different legal standards of care; whereas the true view is that the standard of care is always the same, i.e., that to be expected of the reasonable man, though the amount of it will vary with the circumstances of each case. As the learned editor of the eighth edition of Sir John Salmond's work points out (p. 462), this idea of different standards of care was based on a misunderstanding of the Roman Law, and was introduced into English Law in *Coggs* v. *Bernard* (1704), 2 Ld. Raym. 909. This is, of course, the case containing Lord Holt's famous judgment on bailments, which seems to divide negligence into ordinary, gross and slight. But later authorities disapprove this division. In *Wilson* v. *Brett* (1843), 11 M. & W. 113, at p. 115, Rolfe, B., said that he "could see no difference between negligence and gross negligence, that it was the same thing with the addition of a vituperative epithet." Again, in *Grill* v. *General Iron Screw Collier Co.* (1866), L.R. 1, C.P. 600, Willes, J., at p. 612, agreed with this dictum, and said: "Confusion has arisen from regarding negligence as a positive instead of a negative word. It is really the absence of such care as it was the duty of the defendant to use. A bailee is only bound to use the ordinary care of a man, and so the absence of it is called gross negligence. A person who undertakes to do some work for reward to an article must exercise the care of a skilled workman, and the absence of such care in him is negligence. Gross, therefore, is a word of description, and not a definition . . ." Montague Smith, J., said, at p. 614: "The use of the term gross negligence is only one way of stating that less care is required in some cases than in others, as in the case of gratuitous bailees, and it is more correct and scientific to define the degrees of care than the degrees of negligence." On the other hand, in *Giblin* v. *McMullen* (1868), L.R. 2, P.C. 317, Lord Chelmsford, at p. 336, appears to have thought that as there was a practical difference between the degrees of negligence and that as the classification of Lord Holt had the sanctity of antiquity, the objection of Rolfe, B., to the term "gross negligence" was untimely. Later, Lord Chelmsford quotes the words of Montague Smith, J., cited above. He then says that the word "gross" is not without significance, and that negligence is, at any rate in the case of a gratuitous bailee, "such as to involve a breach of confidence or trust, not arising from some want of foresight or mistake of judgment but from some culpable default." And later: ". . . The degree of care and diligence which a bailee must exercise corresponds with the degree of negligence for which he is responsible," thus preferring the negative to the positive aspect of the case. It is questionable whether he was not really saying that the amount, and not the standard, of care was what varied in each case. In any event the view taken by Rolfe, B., and Willes and Montague Smith, JJ., seems to be generally accepted by the courts as being more in accordance with English legal principles. Moreover, observations in a Privy Council case do not bind our courts, though they demand great respect.

With this in mind let us consider what amounts to negligence of which the criminal law will take notice. In this connection it is hardly necessary to say that for all practical purposes criminal negligence only has to be considered in cases where it has resulted in the death of a human being and the charge is therefore one of manslaughter. The degree of negligence which amounts to a crime has been laid down by Lord Hewart, C.J., in *R.* v. *Bateman*, *supra*, at pp. 11–12. He first deals with civil negligence causing a death, saying that there must be a duty to use care owed to the deceased, a breach of that duty and death resulting therefrom. So far his view is entirely in accordance with the authorities cited above. He then goes on to say that criminal negligence must include these elements and something more. "In a civil action, if it is proved that A. fell short of the standard of reasonable care required by law, it matters not how far he fell short of that standard. The extent of his liability depends not on the degree of negligence, but on the amount of the damage done. In a criminal court, on the contrary, the amount and degree of negligence are the determining question. There must be *mens rea*." He then quotes Erle, J., in *Cashill* v. *Wright* (1856), 6 E. & B. 891, an action for damages against an innkeeper in respect of a guest's property stolen from an inn, the defence being contributory negligence of the plaintiff. The jury were directed that this must amount to gross negligence, if the defence were to succeed. On a rule for a new trial, Erle, J., said that if the jury "were told to understand by gross negligence the absence of that ordinary care which, in the circumstances, a prudent man ought to have taken, as seems to have been the meaning given to gross negligence in some of the modern cases cited before us, the direction on the degree of negligence might not have been objectionable; but the legal meaning of gross negligence is greater negligence than the absence of such ordinary care. It is such a degree of negligence as excludes the loosest degree of care, and is said to amount to *dolus*." The rule was made absolute. It is therefore clear that Erle, J., did not agree with Rolfe, B., and the view which now prevails. But it is upon the view of Erle, J., that Lord Hewart bases his definition of criminal negligence, for, having collected a number of epithets which judges have used to describe criminal negligence, he says that whatever epithet be or be not used the jury must be satisfied that "the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment." This definition can only be explained by recognising that there can be some degree of negligence, no matter what it be called, which is greater than "ordinary" or "civil" negligence. Is this, though now undoubtedly the law, supported by the earlier criminal cases?

If *R.* v. *Senior* [1899] 2 Q.B. 283 was rightly decided, the state of the accused's mind is irrelevant if the act be unlawful. The accused was there charged with wilful cruelty to a child,

contrary to the Prevention of Cruelty to Children Act, 1894, by failing to provide medical aid. Lord Russell of Killowen, C.J., approved the summing up of Willes, J., who had said: "If the prisoner had done anything which was expressly forbidden by statute, and by so doing had caused or accelerated the child's death, he would be guilty of manslaughter, no matter what his motive or state of mind" (p. 285). Lord Russell, at p. 291, said that "wilful" meant deliberate in the sense that the mind went with the act. Neglect was the want of reasonable care, the omission of such steps as a reasonable parent would take; he also said that Willes, J., was right in saying that the standard of care varied as time went on. Thus, if there was an intention to do an act in fact amounting to a lack of reasonable care, judged by the standards of the day, or fixed by statute, the absence of any wicked state of mind seems irrelevant. This is in accordance with Lord Wright's words in *Lochgelly Iron and Coal Co.* v. *M'Mullan*, *supra*, at p. 23, which show that the standard of care in civil cases may be fixed by statute in just the same way. "Whereas at the ordinary law the standard of duty must be fixed by the verdict of a jury, the statutory duty is conclusively fixed by the statute." And he shortly afterwards describes such a breach of duty as "statutory negligence." He also reviews other cases where the standard of care has been so fixed.

Again, in, *R.* v. *Instan* [1893] 1 Q.B. 450, a girl was convicted of manslaughter who had caused the death of her aged aunt by neglecting to provide her with food and medical attention. The basis of the decision seems to have been rather the breach of a moral duty which the law would enforce than the excessive negligence shown.

In earlier cases a direction to the jury on the basis of "negligence or no negligence" and not "negligence or gross negligence" seems to be frequent, though both are found. Thus, in *R.* v. *Tessymond* (1828), 1 Lew. 169, where a chemist's assistant gave a bottle of laudanum instead of a bottle of paregoric, Bayley, J., said to the jury: "If you think there was negligence on the part of the prisoner, you will find him guilty; if not, you must acquit him." Again, in *R.* v. *Rigmaidon* (1833), 1 Lew. 180, where death resulted from a cask falling out of the sling put around it by the prisoner, Parke, J., told the jury: "The double slings are undoubtedly the safest mode; but, if you think that the mode which the prisoner adopted was reasonably sufficient, you cannot convict him." From this it would seem that that great judge, at any rate, thought that any failure to use what was reasonable care in the circumstances of the case was criminal negligence. Again, in *R.* v. *Salmon* (1880), 6 Q.B.D. 79, it was held that three persons were rightly convicted of manslaughter, since the death had resulted from their breach of duty in firing a rifle in a field without taking proper precautions to prevent injury to others. Again, in *R.* v. *Knight* (1828), 1 Lew. 168, a child was killed by a cart, whose driver sat in the cart instead of walking at the horse's head. Bayley, B., held that the prisoner was guilty of negligence and therefore rightly convicted of manslaughter. Also in *R.* v. *Spence* (1846), 1 Cox. 352, where the prisoner was a pilot in a foreign ship with a foreign helmsman, which ran down and drowned a man, Denman, C.J., after consulting Alderson, B., said: "You will consider whether there was some negligence upon the part of the prisoner in not making the foreigners understand thoroughly . . . If you think so you will find him guilty."

On the other hand, in *R.* v. *Longbottom* (1849), 3 Cox, 439, Rolfe, B., said this: "There is a very wide distinction between a civil action for pecuniary compensation for death arising from alleged negligence and a proceeding by way of indictment for manslaughter. The latter is a charge imputing criminal negligence, amounting to illegality; and there is no balance of blame in charges of felony; but wherever it appears that death has been occasioned by the illegal act of another, that other is guilty of manslaughter in point of law . . ." This particular case of a direction based, apparently, on "gross negligence," is noted because of the earlier dictum of the same judge in *Wilson* v. *Brett*, *supra*, and the difficulty of reconciling the two. If he thought that there was no such thing as "gross negligence," it is very difficult to see on what he bases the distinction between a negligent and an "illegal" act. He seems to have meant by "illegal" something criminal, i.e., more culpable or gross than civil negligence. The only way in which the two statements can be reconciled is by reading "illegal" as "actionable" or "amounting to a breach of duty to use care." Such a meaning seems contrary to the plain words in *R.* v. *Longbottom*, *supra*, but is in accordance with those in *Wilson* v. *Brett*, *supra*, which have constantly been quoted and are now generally accepted.

It does therefore seem that criminal negligence ought to include any breach of duty to use care. The greater degree of negligence in fact required in criminal cases seems to be due to the reluctance of juries to convict of manslaughter, particularly in motoring cases. A jury will often convict of dangerous driving when they will refuse to convict of manslaughter, though, as it has been sought to show, this recognition of a higher degree of negligence is unfounded. Indeed, it seems to be recognising not only a difference in degree between criminal and civil negligence, but different degrees of criminal negligence, i.e., "manslaughter negligence" and "dangerous driving negligence," and possibly even a third degree, "careless driving negligence." That there were no degrees in criminal negligence was argued in *R.* v. *Stringer* [1933] 1 K.B. 704, but was not dealt with by the court, and s. 34 of the Road Traffic Act, 1934, permits a jury to convict of dangerous driving a person charged only with manslaughter, the court in *R.* v. *Stringer*, *supra*, having said that a separate indictment should, under the Road Traffic Act, 1930, be preferred for each charge. Degrees of criminal negligence seem, therefore, to have "come to stay."

The more logical course would seem to have been to have built up a body of case law upon the basis of one degree of negligence, namely, the failure to use reasonable care. This might seem harsh, though it would appear to be in accordance with the true view of negligence. The law is, however, otherwise, and must be so accepted. Though the practical result would be the same, it would have done less violence to the modern idea of negligence if Lord Hewart's judgment in *R.* v. *Bateman*, *supra*, had recognised that the amount of care which was considered reasonable was what varied in each case, and not the degree of negligence. At p. 11, he says: "There must be *mens rea*." This may well be taken to mean that the criminal law will require only a slight degree of care and will consider that, for its purposes, due care has been taken unless there is *mens rea*, either within the view of the common law, or fixed by statute. Such a meaning is, it is suggested, more in accordance with modern theory than the later dictum of Lord Hewart, based as it is on the existence of "gross negligence."

For the sake of completeness it may be noted that the doctrine of contributory negligence does not apply in criminal cases based on negligence. See *R.* v. *Swindall* (1846), 2 C. & K. 230, per Pollock, C.B.

Company Law and Practice.

Application of Assets where a Receiver for Debenture-holders has been appointed.

WHERE a receiver has been appointed by or on behalf of debenture-holders, and the assets of the company prove insufficient to satisfy all the claims which are legitimately made upon them, the question of how they are to be applied is one of some practical importance. We shall have to consider the separate cases of a receiver appointed by the court and a receiver appointed under the powers given by the debenture or trust deed. The position in the former case is the subject of authority.

The respective priorities of the receiver, the trustees, the plaintiff in the debenture-holders' action and the debenture-holders themselves were determined in the case of *Batten* v. *Wedgwood Coal and Iron Company*, 28 Ch.D. 317. There the company's collieries had been assigned to trustees on trust to secure the payment of debentures issued by the company. An action was brought by one of the debenture-holders on behalf of himself and the others against the company and the trustees for the execution of the trusts of the deed; and in this action a receiver and manager of the collieries was appointed. When ultimately the property was sold, there was not sufficient to pay the costs of management and the remuneration of the receiver. The question to be decided was whether the receiver ought to be paid before anything could be distributed in the payment of costs or otherwise. Pearson, J., pointed out that the receiver was the officer of the court, and the court was bound to see that he was paid, in the same way as if the trustees had employed a manager they would have been bound to pay him without regard to the sufficiency of the estate to meet the claims upon it. He held, therefore, that the receiver was entitled to be paid in priority to other claims, with the exception that the costs of the realisation of the assets should rank before the receiver's claim; for "the property must be realised by someone in order that it may be distributed, and whoever has realised it and brought the proceeds under the control of the court has really constituted the fund which has to be distributed for the benefit of the receiver and everyone else who is entitled." The various claims therefore were payable in this order:—

(1) The costs of the realisation of the property.

(2) The balance due to the receiver and manager, including his remuneration and costs.

(3) The costs, charges and expenses of the trustees of the deed.

(4) The costs of the plaintiff in the action.

(5) The debenture-holders.

This decision was followed in *Re London United Breweries* [1907] 2 Ch. 511.

But this is not the end of the matter; for in a case where they are applicable the provisions of s. 78 of the Companies Act, 1929, in relation to preferential creditors have to be considered. That section provides as follows:—

"(1) Where, in the case of a company registered in England, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture-holders of any property comprised in or subject to the charge, then, if the company is not at the time in the course of being wound up, the debts which in every winding up are under the provisions of Part V of this Act relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures."

The preferential payments referred to are those mentioned in s. 264 of the Act, and include rates and taxes, certain wages, workmen's compensation and insurance contributions. It will be observed that s. 78 only operates to make them rank in priority to the claims of the debenture-holders where the debentures are secured by a floating charge; a fixed charge retains its priority over preferential debts even when the debenture is secured by a fixed charge and a floating charge and property is comprised in or subject to both charges: see *In re Lewis Merthyr Consolidated Collieries Limited* [1929] 1 Ch. 498.

The effect of s. 78 (where applicable) on the application of assets, where a receiver has been appointed in a debenture-holders' action, is to postpone the claims of the debenture-holders to those of preferential creditors, but to leave other claims with the respective priorities we have already seen determined in *Batten* v. *Wedgwood Coal and Iron Company*, *supra*. This is shown by the decision in *In re Glyncorrwg Colliery Company Limited: Railway Debenture and General Trust Company Limited* v. *The Company* [1926] Ch. 951. There a receiver and manager was appointed in a debenture-holders' action and he carried on the colliery for some months. On the assets being ultimately got in, they proved insufficient to pay the plaintiffs' costs, the costs and remuneration of the trustees under the debenture trust deed, the receiver's remuneration and the preferential creditors; the trustees' remuneration, costs and expenses were by the trust deed a first charge on the money to arise from the realisation of the debenture-holders' security. Tomlin, J., held that the assets were applicable in the following order:—

(1) Costs of realisation;

(2) Costs, including remuneration, of the receiver;

(3) Costs, charges and expenses of the debenture trust deed, including the trustees' remuneration;

(4) The plaintiffs' costs of the action;

(5) Preferential creditors;

(6) The debenture-holders.

The case was decided under the corresponding section of the 1908 Act, which differed from s. 78 of the 1929 Act in that it provided that the preferential debts "shall be paid *forthwith* out of any assets coming to the hands of the receiver"; and it was argued that in effect this gave preferential debts an absolute priority over everything else in respect of assets of every kind that came into the receiver's hands. Tomlin, J., held that this was not so, and that the preferential creditors had priority over the debenture-holders, but not over other claims ranking before the claims of the debenture-holders. This particular point could not, in view of the altered wording, arise under s. 78 of the 1929 Act, but the order of application of the available assets holds good.

So much for the case where the receiver has been appointed in a debenture-holders' action. The application of moneys received by a receiver appointed out of court will depend upon the provisions of the debenture or trust deed under which his appointment is made. Perhaps the first point to be observed is that s. 78 of the 1929 Act is equally applicable to the case of a receiver appointed out of court as to a receiver appointed by the court, for it has been held that a receiver appointed under a power in the debentures is in effect a receiver appointed "on behalf of" the debenture-holders: see *Re Barnby's Limited* [1899] W.N. 103. So that it is important for such a receiver to remember that preferential creditors rank before the debenture-holders if his is a case falling within s. 78.

The effect of the relevant provisions of the debenture may well be to make the order of the payments different from that which we have seen obtains in the case of a debenture-holders' action. Each case will depend upon the particular provisions, but it is very common for a debenture to provide that the moneys received by a receiver appointed under hand shall first be applied in accordance with the first three paragraphs of s. 109 (8) of the Law of Property Act, 1925, and then in payment of the debenture-holders' claims. If we look at s. 109 of that Act we see that it provides that—

"(8) Subject to the provisions of this Act as to the application of insurance moneys, the receiver shall apply all money received by him as follows, namely:—

(i) In discharge of all rents, taxes, rates and outgoings whatever affecting the mortgaged property; and

(ii) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and

(iii) In payment of his commission and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs . . ."

It will be seen that where these provisions apply the receiver's commission ranks later in the list when we compare the order of application in the case of a receiver appointed by the court, though it must be remembered that the receiver in the one case is an agent of the company, and in the other an officer of the court.

Further, a somewhat curious result seems to arise in the case of a receiver appointed out of court, where s. 109 (8) of the Law of Property Act, 1925, governs the application of the money he receives and where the debentures are secured by a floating charge so that s. 78 of the Companies Act, 1929, is applicable. The latter section, as we have seen, makes preferential debts payable in priority to the debentures; para. (i) of s. 109 (8) of the Law of Property Act, 1925, would appear to have the effect of making certain of those preferential debts (rates and taxes) payable (with the other payments mentioned in that paragraph) in priority to anything else; whilst if the words in para. (ii) "other payments . . . having priority to the mortgage" include preferential debts, then all preferential debts would in such a case have priority to the receiver's remuneration. Certainly s. 78 of the Companies Act makes these debts payments having priority to any claim in respect of the debentures, and it seems to me difficult to escape the conclusion that they are "payments . . . having priority to the mortgage" within the meaning of s. 109 (8) (ii) of the Law of Property Act. I have not found any authority on this point, but if the result in such a case is, as I have suggested, to postpone the receiver's remuneration to the claims of preferential creditors, it is one which I think is not generally appreciated.

Before leaving this topic I should perhaps point out that in a case to which s. 78, Companies Act, 1929, applies, a receiver and manager with notice of a preferential claim is liable in damages for exhausting the assets of the company in making payments to ordinary creditors without first applying the same or a sufficient part thereof in satisfying such preferential claim (see *Woods* v. *Winskill* [1913] 2 Ch. 303). The receiver therefore should take care to retain sufficient assets to meet the claims of preferential creditors. Finally, it will be remembered that sub-s. (3) of s. 78 provides that any payments made under the section shall be recouped as far as possible out of the assets of the company available for payment of general creditors.

A Conveyancer's Diary.

Innocent Misrepresentation by Vendor—Warranty.

I HAVE had an interesting point put to me for which I may have been (although I do not know that I was) in part responsible.

The reader will, I hope, recollect that I have called attention from time to time to the desirability of a prospective purchaser putting to the vendor certain questions before entering into the contract. Many of such enquiries are usually asked in the requisitions on title but beyond giving information to the purchaser which he ought to have, do not help him much because his contract probably precludes him from taking any objection regarding such matters.

The case that I have in mind is one where the solicitor for the purchaser made before contract the enquiries which I have suggested should be made and in reply to the question whether there was any tithe rentcharge payable in respect of the property the vendor's solicitor said "No."

It appears that the vendor had not been called upon to pay any tithe rentcharge and the representation made by his solicitor that there was none was made quite innocently.

Pausing there for a moment, may I say that I have never been able to understand why some solicitors persist in answering questions of that kind personally. Why will they (as they so frequently do) say "we do not know" or "we cannot say"? Such replies are, in fact, no sufficient answers to the requisitions and the solicitors for the purchaser are entitled to say so and require the answer of the vendor. Why not, as a matter of course, adopt the proper and indeed the only right form—"The vendor says that he does not know" or "the vendor says that he is not aware of any"?

I have seen even recently a number of replies to requisitions on title which the solicitors for the vendor have purported to answer personally which, of course, they should never do.

Now, to return to the case in point. The solicitors for the vendor committed themselves (and their client) to the statement that there was no tithe rentcharge payable. A formal contract was entered into in which no reference was made to tithe rentcharge. The contract was completed by a conveyance. It was afterwards found that there was a tithe rentcharge upon the property which had not been claimed whilst the vendor was the owner and he and his solicitors had no reason to think that there was any such charge.

The question is whether, after completion, the purchaser has any, and if any, what, right of action against the vendor for the "innocent misrepresentation" made to him.

Now, if that were all, I should have thought that the purchaser would have, in such a case, a good cause of action against the vendor for breach of warranty. The vendor, in effect, has warranted the property to be free from tithe rent-charge and that warranty was collateral to and independent of the contract for sale, and I think that the purchaser could sue for damages for breach of it, notwithstanding that the transaction had been completed by a conveyance.

If the fact that there was a tithe rent-charge upon the property had been discovered before completion there can hardly be any doubt that the purchaser would have been entitled to rescind the contract or to compensation. After completion it seems to be well established that the purchaser could not claim rescission. In that connection see *Wilde* v. *Gibson*, 1 H.L.C. 605, and *Seddon* v. *North Eastern Salt Co.* [1905] 1 Ch. 326. But, whilst not entitled to rescission the purchaser may well have a right of action for breach of warranty.

A case in which such a right was enforced is *De Lasselle* v. *Guildford* [1901] 2 K.B. 215. The facts in that case were that the plaintiff and the defendant negotiated for the lease of a house by the latter to the former. The terms were arranged but the plaintiff refused to hand over the counterpart which he had signed unless he received an assurance that the drains were in order. The defendant verbally represented that they were in good order, and the counterpart was thereupon handed to him. The lease contained no reference to the drains. The drains were not in good order, and an action was brought to recover damages for breach of warranty.

It was held that the representation made by the defendant as to the drains being in good order was a warranty which was collateral to the lease and for breach of which an action was maintainable.

Some observations made in the judgments in that case were criticised by the House of Lords in *Hulbert Symons & Co.* v. *Buckleton* [1913] A.C. 30, where it was laid down that the question whether an affirmation made by the vendor at the time of sale constitutes a warranty depends upon the intention of the parties to be deduced from the whole of the evidence and the circumstance that the vendor assumes to assert a fact of which the purchaser is ignorant though valuable as evidence of intention is not conclusive of the question.

I think that if a solicitor for a vendor definitely says "No" to a question whether there is any tithe rentcharge, that is very strong evidence of an intention to warrant the property free from such a charge.

It seems to me, therefore, that if there should be, in such a case as that which I am discussing, no reference to tithe rentcharge in the contract or in the conveyance, the purchaser

would, even after completion, be entitled to recover damages for breach of warranty. The vendor in effect warranted the land to be free from tithe rentcharge, and I do not see that the subsequent contract and conveyance which made no reference to any such charge could affect the right of the purchaser to recover damages for breach of the contract of warranty.

A more difficult question would, however, arise if the contract did refer to tithe rentcharge.

It is, as we all know, a common practice for The Law Society's Conditions of Sale to be adopted almost without question, and the same may be said of the National Conditions of Sale.

The Law Society's Conditions of Sale (which for a time we knew as the "General Conditions of Sale") provide in cl. 19 (1) as follows: "The property is, unless otherwise stated in the contract, sold subject to all land tax or tithe rentcharge (if any) affecting the same."

If the contract were in that form, would the warranty still hold?

I know of no authority on that point.

It is possible that the words "if any" may save the situation from the purchaser's point of view. It could, I think, with some reasonable hope of success be contended that a purchaser having had a warranty that there was no tithe rentcharge would be quite willing to contract to pay "tithe rentcharge (if any)" relying upon the warranty. There is, I think, much virtue in that "if any."

At the same time this points once more to the undesirability of using these mass production forms of contract without the most careful scrutiny as to their appropriateness to each particular case. I, personally, do not like them. It is not unlikely that a solicitor, having committed himself to a statement amounting to a warranty (which of course he should never do) may adopt one or other of these forms, overlooking the fact that the contract may be inconsistent with the contract of warranty. If the contract had been drafted in the now old-fashioned manner by the vendor's solicitor and sent for approval to the solicitor for the purchaser, there could be no doubt that the question whether the property was or was not sold as free from tithe rentcharge would have clearly appeared. There would have been no "if any" about it.

Landlord and Tenant Notebook.

Deposit to Secure Performance of Covenants.

A SHORT tenancy agreement which recently came under my notice stated, after naming the parties and date, that in consideration of the sum of so many pounds, the above-mentioned parties had agreed together as followed. What followed consisted of five clauses: the first described the premises and specified the rent, payable in advance; the second was a proviso for re-entry on non-payment of rent or breach of any covenant; next came a covenant to deliver up the premises in as good a state of repair as they were then in; the fourth clause was a covenant against alienation; and the last one was an agreement that the landlord should, on the expiration of the tenancy, pay the tenant a sum of so many pounds, provided the tenant had observed and performed all and every one of the covenants. Those who noticed the title of this article will not be surprised to learn that the so many pounds were the same in each case.

It is not a fair criticism of a draftsman's efforts that the result presents unusual features. But, apart from this question of novelty, the document above described might well have stated by and to whom the payment was to be made in the first instance, and should not have omitted to mention that it was not the whole of the consideration. Also, an express covenant to pay the rent has its advantages; and "all and every one" of the covenants sounds a bit pompous when there are only two.

But what is of greater interest is the question whether this device, amounting in effect to a deposit to secure performance of covenants, would work. What would happen if, at the end of the term, no unauthorised alienation having occurred, and the premises being little the worse for wear, the tenant demanded repayment of the sum or of the sum, less the actual amount which would be due for dilapidations? And what would happen if, the covenant not to assign or sub-let having been observed, but the premises having suffered severely, the landlord proposed pulling them down and the tenant demanded the whole of his payment back?

The basis of the tenant's claim in the former case would, of course, be the rule that penal provisions in a contract are unenforceable. Without going into the details of the law as to what constitutes a penalty and what a valid agreement for liquidated damages, it is clear that if a tenancy agreement or ease were to provide that the tenant should pay the landlords a specific sum of money as damages for the breach of any covenant, no court would enforce the provision. Penal rents are (subject to A.H.A., 1923, s. 29) often enforceable, it is true; but a clause giving the aggrieved party the same remedy, regardless both of the nature and of the extent of his injury, is clearly void. Apart from dilapidations, the harm done by an unauthorised alienation may vary considerably.

I agree that it might be difficult to satisfy a court that the agreement I have outlined must be construed as imposing a penalty. Perhaps, artfully, the draftsman has described what is really a deposit as if it were a premium. But, looking at the document as a whole, a court might well hold that it expressed the intention that the money should be lodged as security only; and this might be so held, even if the draftsman had been artistic enough to describe the payment as part of the consideration.

The real difficulty the covenantor would have to surmount would lie in the fact that he, and not the covenantee, would be taking the offensive. In this respect the device is more subtle than a mere agreement to pay a specified sum "in lieu of dilapidations," which I discussed in Vol. 77, p. 479. For the fact that someone has agreed to suffer at the hands of another what the law would not cause him to suffer does not give the sufferer a cause of action.

I think his remedy is not a claim for the money referred to in the last clause, less what he admits to represent dilapidations, but rather a claim for the (same) sum referred to at the commencement of the document as money had and received to the plaintiff's use. By claiming the whole amount on this ground, and eventually paying into court the estimated amount of the dilapidations in answer to an admitted counterclaim, the tenant stands a better chance.

The reasoning would be that the true consideration for the grant was the rent and tenant's covenants; and the circumstance that the landlord has promised to pay the same amount if the covenants be kept can hardly help the landlord, for that promise is itself without consideration. It is elementary law that a promise to reward someone for doing what he is already liable to do is *nudum pactum*. But even so, the answer that the payment was made voluntarily and with full knowledge is likely to be conclusive, and on the whole I think the device would succeed.

In the second set of circumstances visualised above, the thoughts of the tenant's advisers would naturally turn towards L.T.A., 1927, s. 18. It is common knowledge that the object of that enactment was to prevent landlords from obtaining from their tenants contributions towards the cost of demolishing and rebuilding the premises by recovering damages for failure to effect repairs which would never be effected. So the question again resolves itself into this: does the statute prevent a landlord from retaining a sum of money which he would be unable to recover? I cannot see that it does. The

subject of the section is always "damages" (for failure to keep, failure to put, failure to leave in repair), and again I think the tenant would be ill-advised to found a claim on the fifth clause of the novel agreement. But again, he might claim the return of the initial payment as money had and received to his use, eventually pleading the statutory enactment as an answer to a possible counter-claim filed as an alternative to the defence; also again, an answer alleging voluntary payment might dispose of this argument.

Plummer v. *Ramsey.*

I referred above to an article in the "Notebook" of 8th July, 1933 (77 Sol. J. 479). A correspondent has just written asking whether the views expressed on that occasion have been altered by the decision in *Plummer* v. *Ramsey* [1934] W.N. 42. The answer must be that, while views expressed on an undecided point are necessarily liable to revision, *Plummer* v. *Ramsey* does not actually deal with the same point. In the article I discussed what would be the fate of a proviso that the tenant should, shortly before the term expired, pay the landlord a specified sum "in lieu of dilapidations" if there were no dilapidations. The since decided decision dealt with a clause conferring on the landlord an option to demand a specific sum instead of demanding dilapidations, and the basis of the judgment in the lessor's favour was that he was suing under his option, and not suing for damages for disrepair at all, so that L.T.A., 1927, s. 18, could not apply. Such a device, then, succeeds; but the proviso discussed in the article seemed to be analogous to the device adopted by the prisoner who, professedly cautious, asked the judge whether it would be contempt of court if he (prisoner) said that he (judge) were a —— well, let the reader fill in the blanks. In *Plummer* v. *Ramsey* one obligation was substituted for another; in the proviso, an obligation was measured and the result re-named.

Our County Court Letter.

PARENTS' LIABILITY FOR CHILDREN'S TORTS.

In *Taylor* v. *Mason*, recently heard at Ipswich County Court, the plaintiff's case was that the defendant allowed his son to have a dangerous instrument; that the child, having mischievous propensities, was allowed to continue to use the instrument, also an axe and an air-gun; that the defendant failed to exercise any proper control over the child; that, as a result of the defendant's negligence, the plaintiff had suffered pain, loss of employment, and the possibility of following his intended career as a policeman. The evidence was that the plaintiff (aged nineteen years) was employed by the defendant as a gardener, and had lost the sight of one eye, which had been pierced by an arrow, shot from a bow by the defendant's child. The latter had previously shot an arrow into the eye of the milkman, whose eye had been saved by medical skill. At Easter, 1934, the child had thrown an axe at the plaintiff, and the defendant knew of the child's mischievous propensities. The defendant denied the existence of such propensities, but, even if he won, he would be liable to proceedings under the Workmen's Compensation Acts. A sum of £350 and costs was therefore offered, and was accepted in settlement. Where a stranger, i.e., not an employee, is injured, the parent may be liable for negligence in allowing his child the opportunity to commit a tort. See *Bebee* v. *Sales* (1916), 32 T.L.R. 413, arising out of damage by an air-gun.

VALIDITY OF PAYMENTS TO LOCAL AGENTS.

In *Motor Gear and Engineering Co. Ltd.* v. *Mortimore*, recently heard at Chippenham County Court, the claim was for £10 10s. as the price of a water-softener. The defendant admitted having had the goods, but his case was that he had paid the amount to the plaintiff company's former agent, who had failed to forward the money, and had afterwards been sentenced to imprisonment. In a reserved judgment, His Honour Judge Kirkhouse Jenkins held that the local agent had no authority to receive payment. The defendant also never regarded him as having any such authority until he made a false statement to that effect, for which the plaintiff company was not responsible. The defendant, instead of paying by crossed cheque, payable to the plaintiff company, had paid the money in cash, but this did not render the payment binding on the plaintiff company. The latter had sent the water-softener direct, not through any agent, and their name and address was therefore known to the defendant. Judgment was given for the plaintiffs, with costs, and similar judgments were given in three similar cases, which (in view of the above decision) were not contested.

LIABILITY FOR GALE DAMAGE.

In *Lilley* v. *Skevington*, recently heard at Nottingham County Court, the claim was for £17 17s. as damages for negligence. The defendant owned a garage, which stood on the edge of an old brickyard, and there was a drop of 80 feet behind the building. The position was exceptional, and exposed to winds, but the roof (which weighed 7 tons) was nevertheless not anchored. The result was that a gale created a vortex or vacuum above the building, and the pressure (viz., 15 lbs. to the square inch or 170 tons to the underside) lifted the roof off, so that it fell on to the plaintiff's premises, causing damage to the above amount. The defence was that it was unusual, with such a type of roof, to bolt the girders to stanchions. The method of construction would have been satisfactory under normal conditions, but the mortar had apparently not set. His Honour Judge Hildyard, K.C., observed that the city surveyor was satisfied with the roof, and the cause of the accident could not reasonably have been expected. The defendant had not been negligent, and judgment was given in his favour, with costs.

Land and Estate Topics.

By J. A. MORAN.

Because last year was a good one, and the hammer was kept busy right up to the end, there was a general belief that the market for real estate would get a move on very early in 1936. This, however, is just what it has not done. True, there has been a lot of buying and selling by private treaty, chiefly of property that had been withdrawn at auction, but, for some unaccountable reason, there has been much hesitation in the fixing of dates of sales by auction. Only four auctioneers offered property for sale at the London Auction Mart the week before last, and most of the lots on offer were of a very ordinary character. There is no doubt, however, that as soon as the weather improves, there will be increased activity: it is surprising what good effect a nip of Spring in the air has on a quiet market.

A report is current that those auctioneering firms who communicated to the Press a short while ago that their turnover in respect to the sale of real property during last year exceeded many millions of pounds have made a big impression on the Chancellor of the Exchequer. So ends what may be only the first chapter.

The series of lectures being given just now at the College of Estate Management is up to its usual high level. It is quite evident that Mr. Adkin knows the man for the job, as well as the subject that merits special attention at the moment. On a recent occasion Mr. Price Davies, city engineer and architect to the Bangor (North Wales) City Council, gave a description of the housing programme of his authority; and what interested me most of all was the arrangement that in the case of terraces set on a hill only one side of the road should be

built on, and the fronts of the houses, not the nondescript backs, should overlook the valley. This is an example that should be followed wherever possible. Further, to avoid a monotonous appearance, the houses were divided into groups, each group having certain variations in the facings of the wall, the colour or size of the slates, and the shape or colour of the ridge.

It has been suggested that the time is ripe for a revival of dealing in investment blocks on lines similar to those that were offered forty years ago when there was a great building and investment boom. This is going a bit too far at the moment. The building of small houses with rentals likely to appeal to the working man does not necessarily mean a fair return on the amount of capital invested; a lot depends on a close study in association with a local expert of the needs of a particular neighbourhood. An improving industrial district should get first consideration; and if there is good reason to believe that suitable residential accommodation for the working classes is not much in evidence, very little risk attends an earnest effort to fill the gap.

Quite an interesting story is centred round the experience of Mr. P. W. Daniell, who won the Silver Medal at the recent examination of the Auctioneers and Estate Agents Institute. His father, during the war, met Mr. Tinsley, a Lincolnshire auctioneer, in a dug-out. Conversation turned to professions, and Mr. Daniell said, "I have a boy whom I am going to make an auctioneer, and I shall article him to you." Which is just what he did.

The language one sometimes hears at auctions of live stock is not very convincing. A Kent auctioneer tells me that after one of his recent sales, he heard one man say to another: "I expect y' didn't get what y' expected for the old pig; but y' didn't expect to anyway, I expect."

What appears to be something in the nature of a "hush! hush!" sale is given prominence in a leading London daily. Certain properties, we are told, "are not specified for publication as it is expected that a private sale will take place." One clue, however, is vouchsafed, but it does not appear to be of much value. Anyway, here it is: "The contemplated transaction relates to premises in a spot where little or nothing has been purchased."

The Chartered Surveyors Institution dinner, postponed from 3rd March, will take place at the Grosvenor Hotel, Park Lane, on 12th May.

To-day and Yesterday.

LEGAL CALENDAR.

17 FEBRUARY.—Libel *was* libel in the good old days. Take the action brought by the great George Augustus Sala against the publishers of a book called "Modern Men of Letters Honestly Criticised," in which there appeared an article on himself. It called him "a scholar yet a driveller of tipsy high-flown nonsense." It said that he "gets into the hands of the Jews, is often drunken, always in debt, sometimes in prison, and is totally disreputable, living à tort et à travers the rules of society." On the 17th February, 1871, the Lord Chief Justice and a jury considered the matter, and the defendants, having called no evidence, found that their lack of appreciation of a great journalist had cost them £500 damages.

18 FEBRUARY.—On the 18th February, 1804, Brigadier-General Picton appeared before the Lord Chief Justice to give bail to answer on indictment for inflicting torture on a girl named Luise Calderon while he was Governor of Trinidad. So began a case which was to drag on for the rest of his life, being still undetermined eleven years later when he fell at Waterloo. There is little doubt that the charges were trumped up, since the Spanish law which prevailed in the island permitted the use of torture for certain judicial purposes. So well did his former subjects think of him, that they subscribed £4,000 towards his defence.

19 FEBRUARY.—On the 19th February, 1807, a jury in the Irish Court of King's Bench took thirty-five minutes to award a plaintiff £20,000 damages. The case was one of "crim. con." The plaintiff was Lord Cloncurry, described by his counsel as "a nobleman of considerable wealth, great sensibility of nature and a cultivated mind." His wife was described as "lovely in her person, fascinating in her manners and pure in her principles." The villain of the piece was Sir John Piers, baronet, and treacherous school friend of the plaintiff. There was some unconscious humour in the evidence, as when the husband, his suspicions aroused, first found the lover out shooting on his estate, and "his first care was to get possession of his gun under pretence of shooting a rabbit." Then he told him to go.

20 FEBRUARY.—A peculiarly macabre murder case was tried at the Lancaster Assizes on the 20th February, 1858, when Thomas Kershaw, aged nineteen, together with his mother, aged fifty-nine, was charged with killing his father, a quiet inoffensive old man, whom he had battered to death with a shovel and hidden in the coal cellar. The mother had helped to conceal the crime. From the evidence of the rest of the family, it appeared that they had long been quite mad, the son being fully aware of his state and often saying "Father, take me to the asylum for I'm noan reet." They were acquitted on the ground of insanity.

21 FEBRUARY.—On the 21st February, 1764, there came on before Lord Mansfield in the Court of King's Bench the trial of John Wilkes, then at the height of his fame as an agitator, for publishing No. 45 of his paper, the "North Briton." Wilkes himself was in Paris recovering from a wound received in a duel, but he was represented by an array of five distinguished counsel. The announcement that members of the jury had received inflammatory papers in favour of the defendant drew stern remarks from the judge. Wilkes was found guilty, and, being out of the jurisdiction, was subsequently outlawed.

22 FEBRUARY.—On the 22nd February, 1777, Dr. Dodd, fashionable divine and popular preacher, was tried for forgery at the Old Bailey.

23 FEBRUARY.—On the 23rd February, 1793, Captain William Johnston was sentenced at Edinburgh to three months' imprisonment in the Tolbooth on account of an article published in the "Edinburgh Gazeteer," commenting on a sedition trial earlier in the year. The court held, with evident indignation, "that the said publication is a false and slanderous representation of the proceedings in the said trial and a gross indignity offered to this high Court, calculated to create groundless jealousies and doubts of the due administration of justice."

THE WEEK'S PERSONALITY.

Poor William Dodd, the son of the vicar of Bourne, in Lincolnshire, was an enterprising and ambitious young man. He did quite well at Cambridge, went to London, where he indulged in the gaieties of the town and attempted a literary career, anything from a comedy to an elegy on the death of the Prince of Wales being within his range. Soon, however, he turned to a clerical career, assuming the character of popular preacher and philanthropist. A Society for the Relief of Poor Debtors, another for the Recovery of Persons Apparently Drowned, acknowledged him as founder. Fifty works flowed from his pen, sermons of all sorts, translations, books on Shakespeare and Milton, and a treatise on capital punishment. The sons of the nobility came for coaching to his country house at Ealing and he became a royal chaplain. Finally, his savings, and £1,000 won by his wife in a lottery, enabled him to invest in a chapel in Pimlico, whither he

attracted fashionable congregations. But now he fell into an extravagant way of living. Scandals were whispered; he incurred heavy debts; he got into trouble for trying to purchase the living of St. George's, Hanover-square. At last, the forgery of Lord Chesterfield's signature on a bond led him to the Old Bailey dock, perhaps the most unlikely figure that ever stood there. He was, of course, found guilty, and after the judges in Serjeants' Inn had considered a point of law, sentenced to death. Despite most influential efforts on his behalf, he was hanged.

THE LOST EXHIBIT.

At a juvenile court at Bradford recently, a case of theft was dismissed because, when it came on, it was found that the bar of chocolate alleged to have been stolen was no more, a mouse having eaten it. It is well that neither the vanished exhibit nor the case itself was of spectacular importance, for the accident recalls an incident which once occurred when Peter Burrowes, a great character at the Irish Bar long ago, was conducting a prosecution for murder. At the time, he was suffering from a bad cold and he made his opening speech with a box of lozenges in one hand and the fatal pistol bullet in the other, pausing now and then in his address to help himself to a lozenge. Suddenly, in the middle of an impressive sentence, he paused and a look of the utmost apprehension was seen to spread over his face as he exclaimed in alarm: "Oh! Gentlemen, gentlemen! I've swallowed the bullet." Learned counsel suffering from the effects of this year's rigorous winter should take warning by this and be careful of the exhibits.

HARMONY AND LAW.

In a recent case at Bow County Court, when the effect of an ankle injury on a capacity for dancing was in question, Judge Owen Thompson said: "I don't know much about dancing. I can speak personally of one movement—the inversion of the foot when playing an organ." Though few (if any) of the present occupants of the bench could claim this very special piece of knowledge, His Honour is in the current of a long tradition wedding law and harmony. Of Dyer, C.J., the poet wrote:

"For publique good, when care had cloid his mind,
The only joye, for to repose his sprights
Was musique sweet . . . "

Lord Keeper Guilford used to say that had he not been able "by his practice of music upon his bass or lyra viol . . . to divert himself alone, he had never been a lawyer." Gruff Lord Thurlow learnt the double bass in order to qualify himself to superintend the musical education of his children, while Sir Thomas More went a step further and, in his enthusiasm for the art, prevailed on his second wife "to take lessons on the lute, the cithera, the monochord and the flute, which she daily practised to him."

Obituary.

SIR JOHN LITHIBY.

Sir John Lithiby, LL.B., C.B., Barrister-at-law, of Crown Office Row, Temple, died on Friday, 14th February, at the age of eighty-three. He was educated at Bristol Grammar School and London University, and in 1882 he was called to the Bar by the Middle Temple. He was for some forty-eight years a valued official in the old Local Government Board, and was appointed legal adviser to the Board in 1910. He was made a C.B. in 1904, and was knighted in 1918.

MR. G. A. CHAPRONIERE.

Mr. George Augustus Chaproniere, solicitor, senior partner in the firm of Messrs. Chaproniere & Co., of High Holborn, and formerly of Haymarket, S.W., died on Sunday, 16th February, at the age of sixty-three. Mr. Chaproniere was admitted a solicitor in 1897. He was a member of the London Solicitors' Golfing Society.

MR. W. H. W. CRUTTWELL.

Mr. Walter Harry Wilson Cruttwell, retired solicitor, of Frome, died on Friday, 7th February, at the age of eighty-five. Mr. Cruttwell, who was admitted a solicitor in 1874, was a former partner in the firm of Messrs. Daniel & Cruttwell, of Frome.

MR. F. T. HUNTLEY.

Mr. Frederick Thomas Huntley, M.A. Cantab., retired solicitor, of Bournemouth and Boscombe, died at Boscombe, on Thursday, 13th February. Mr. Huntley was admitted a solicitor in 1888.

MR. J. H. LANSDELL.

Mr. James Henry Lansdell, solicitor, of Hastings, died in a nursing home at Hastings, on Sunday, 9th February, at the age of eighty-three. Mr. Lansdell was admitted a solicitor in 1877.

MR. T. PENNY.

Mr. Thomas Penny, retired solicitor, of Berkhamsted, Herts, died on Wednesday, 19th February, at the age of eighty-three. Mr. Penny, who was admitted a solicitor in 1875, was senior partner in the firm of Messrs. Penny & Son, of Berkhamsted. He held several public offices, including that of Clerk to the Great Berkhamsted Urban District Council.

MR. L. C. TREE.

Mr. Louis Charles Tree, solicitor, of Norwood Hill, S.E., died on Tuesday, 18th February, at the age of sixty-four. Mr. Tree, who was admitted a solicitor in 1913, was formerly a partner in the firm of Messrs. Finch, Jennings & Tree.

Notes of Cases.

Court of Appeal.

Fenton's Trustee *v.* **Commissioners of Inland Revenue.**

Lord Wright, M.R., Romer and Greene, L.JJ.
6th, 9th and 10th December, 1935, and 24th January, 1936.

REVENUE—INCOME TAX—BANK LOAN—NO ACTUAL PAYMENT OF PRINCIPAL OR INTEREST—INTEREST DEBITED TO LOAN ACCOUNT—OTHER TAXED INCOME OF BORROWER—CLAIM TO REPAYMENT OF TAX—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), s. 36 (1).

Appeal from a decision of Finlay, J.

In the year ending the 5th April, 1921, F. had a total income of £26,301, taxed either by deduction or direct assessment. Out of this he paid £1,506 for ground rent and loan interest paid under deduction of tax and £17,018 for bank interest on loan accounts with certain banks, which interest was paid without deduction of tax, and was admitted to be within s. 36 (1) of the Income Tax Act, 1918, under which the tax was repayable. There remained £7,777 of the income. In 1918 F. had borrowed from the H. Bank on the security of land in Labrador a sum of £250,000 and had since paid nothing in respect of principal or interest, the charges, including interest, being debited each half year and added to the principal, so that in June, 1921, the amount of the debit balance was £302,973 2s. 8d. The interest charged in 1920–21 was certified by the bank as £22,402 4s. 7d. It was not certified that payment had been made and the account showed that it had been added to the debit balance. It was not suggested that the £7,777 income remaining after the other charges had been paid had been employed in connection with this interest. The trustee of F.'s estate now claimed that by reason of the

adding of the interest to the amount advanced it had in law been paid and to the extent that F. had taxed income available in that year this interest must be deemed to have been paid "out of profits or gains brought into charge to tax" within s. 36 (1) of the Act, thus giving a claim to repayment of tax. Finlay, J., held that the action failed.

LORD WRIGHT, M.R., dismissing the plaintiff's appeal, said that the first question was whether the interest had been paid. He would proceed on the footing that it was deemed to be paid within s. 36 (see *Commissioners of Inland Revenue* v. *Holder* [1931] 2 K.B. 81). The next question was whether the payment was "out of profits or gains brought into charge to tax." There was no rule of law compelling the court to hold that there was in all cases an absolute right to attribute interest payments to income, if there was any income available, save in cases of illegality or *ultra vires* (see *Birmingham Corporation* v. *Commissioners of Inland Revenue* [1930] A.C. 307; *Sugden* v. *Leeds Corporation* [1914] A.C. 483; *Central London Railway* v. *Commissioners of Inland Revenue*, 151 L.T. 333). The facts must be examined in each case. The payment must be neutral and the attribution must not be inconsistent with the taxpayer's conduct, though, *primâ facie*, he had a right to attribute the payment in the manner most advantageous to himself and was not bound to show affirmatively that it was made out of a taxed fund either by appropriation or as a matter of book-keeping. The facts in this case were only consistent with the interest payment having been specifically segregated from the balance of the taxed income, the £7,777. There was no mixed fund from which the payment could have been made, and no neutral payment.

ROMER, L.J., agreed.

GREENE, L.J., dissented.

COUNSEL: *Needham*, K.C., and *F. Talbot*; *The Solicitor-General* (Sir Donald Somervell, K.C.), and *R. Hills*.

SOLICITORS: *Blundell, Baker & Co.*, Agents for *Mumfords & Gordons*, of Bradford; *Solicitor of Inland Revenue*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Crozier *v.* Wishart Books Ltd.

Slesser and Scott, L.JJ.
20th, 22nd and 29th January, 1936.

PRACTICE — INTERROGATORIES — LIBEL — ACTION AGAINST PUBLISHER—AUTHOR NOT A PARTY—PUBLISHER'S INFORMATION AS TO STATE OF AUTHOR'S MIND.

Interlocutory appeal from a decision of Greaves-Lord, J.

The plaintiff brought an action against the publishers and printers of a book which he alleged contained matter defamatory of him. He did not bring an action against the author. The defendants pleaded that the words complained of were not capable of a defamatory meaning, that in so far as they contained statements of fact they were true in substance and in fact, and that in so far as they consisted of expressions of opinion they were fair comment made in good faith and without malice upon the facts which were matters of public interest. Greaves-Lord, J., affirmed an order of the Master giving the plaintiff leave to deliver certain interrogatories. These asked in substance: (1) What information the defendants had when they respectively published and printed, and what information the author had when he wrote the words complained of, which induced them to believe that the expressions of opinion alleged in the defence to be fair comment made in good faith and without malice were true; (2) what steps the defendants took before they respectively published and printed, and what steps the author took before he wrote the opinions to test whether they were founded on fact; (3) whether the defendants or the author believed their information to be true. The defendants appealed.

SLESSER, L.J., in giving judgment, said that it was not necessary to express any opinion whether the malice of a joint tortfeasor upset the privilege of the defendants pleading fair comment, no malice being shown against them (see *Smith* v. *Streatfield* [1913] 3 K.B. 764; *Thomas* v. *Bradbury, Agnew & Co. Ltd.* [1906] 2 K.B. 627; *Robertson* v. *Wylde*, 2 M. & Rob. 101). But even assuming this malice upset the defendants' privilege, these interrogatories put too great a burden on them. The plaintiff could ask what information the defendants had as to the author's knowledge at the time of publication, but could not require them to make inquiries as to information which the author had, but which he had never communicated to them (see *Bolckow* v. *Fisher*, 10 Q.B.D. 161, and "Gatley on Libel," 2nd ed., p. 601). The first interrogatory must be disallowed in so far as it asked more than the information which the defendants had as to the author's knowledge at the time when they respectively published and printed the words complained of. In the other interrogatories there must be a consequential omission of the references to the author.

SCOTT, L.J., agreed.

COUNSEL: *Croom-Johnson*, K.C., and *J. L. Pratt*; *H. Leon* and *Sir James Henry*.

SOLICITORS: *W. H. Court & Son*; *Rubinstein, Nash & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re a Debtor: *Ex parte* Cadbury Bros. Ltd.

Lord Wright, M.R., Romer and Greene, L.JJ.
31st January, 1936.

BANKRUPTCY—PETITION—MARRIED WOMAN TRADER—REGISTRAR'S REFUSAL TO PLACE PETITION ON FILE—LAW REFORM (MARRIED WOMEN AND TORTFEASORS) ACT, 1935 (25 & 26 Geo. 5, c. 30).

A married woman carrying on business incurred a debt before the 5th August, 1935, the coming into operation of the Law Reform (Married Women and Tortfeasors) Act, 1935. It was now sought to file a bankruptcy petition against her. On an *ex parte* application counsel said that since the decision of *In re a Debtor* (No. 490 of 1935), 154 L.T. 44; 79 SOL. J. 839, the Registrars in Bankruptcy had refused to place on the file petitions against married women in such circumstances and submitted that they acted under a misapprehension of the Court of Appeal's judgment in that case.

LORD WRIGHT, M.R., said that the point should be argued *inter partes*, but could not be until there had been service of the petition. Therefore, it was ordered that the petition should be filed at the petitioner's risk, without prejudice to the right of any person affected to contend that it ought not to have been filed.

ROMER and GREENE, L.JJ., agreed.

COUNSEL: *J. G. Strangman.*

SOLICITORS: *Darling & Taylor.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Bruce *v.* Odhams Press Ltd.

Greer, Slesser and Scott, L.JJ.
13th and 14th January and 7th February, 1936.

PRACTICE—ACTION FOR DEFAMATION—NEWSPAPER ARTICLE—PLAINTIFF NOT NAMED—STATEMENT OF CLAIM—PARTICULARS OF ALLEGATION THAT WORDS WERE PUBLISHED OF PLAINTIFF.

Appeal from a decision of Lewis, J.

The defendants in a newspaper belonging to them published an article headed: "Plane Smuggling: the New Racket," which alleged that "it was an Englishwoman" who started smuggling war-planes to Abyssinia to avoid the arms embargo. It also referred to "an enterprising young Englishwoman." The plaintiff who was a well-known airwoman brought an action for libel alleging in her statement of claim that the article meant to refer to her. Lewis, J., held that she need not give particulars of this allegation.

GREER, L.J. (whose judgment was read by SLESSER, L.J.), allowing the defendants' appeal, said that the defendants contended that they were entitled to the particulars on the ground that they were necessary and desirable that they might be in a position to decide what their defence should be. It was an essential part of the plaintiff's cause of action that the words were defamatory of her and not of some other person. Defamatory statements which did not by their words refer to the plaintiff must be made referable to her by reason of special facts and circumstances which showed that they could reasonably be so construed. Under existing practice, the cause of action must be alleged, not in general terms, but with particularity. The " material facts " within Ord. XIX, r. 4, on which the plaintiff must rely included the facts from which it was to be inferred that the words referred to her, and as without them the defendants could not decide how to plead, they were entitled to further particulars. It had been contended for the plaintiff, relying on Ord. XIX, r. 7 (*b*), that the particulars should not be ordered before defence, but they were necessary and desirable to enable the defendants to decide how to plead. His lordship referred to *Philipps* v. *Philipps*, 4 Q.B.D. 127, at pp. 131, 133. The point that such particulars were oppressive because the plaintiff could not at present know all the evidence available showing facts which justified readers of the article in interpreting it as defamatory of her. This would be provided for by allowing her to supplement the particulars at any time up to twenty days before the date of the trial, or such later time as might be ordered by the court or judge at the trial on such terms as might be deemed just.

SLESSER and SCOTT, L.JJ., agreed.

COUNSEL: *V. Holmes; H. St. J. Field.*

SOLICITORS: *Lewis & Lewis; Kenneth Brown, Baker, Baker.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Sutherland Publishing Co. Ltd. *v.* Caxton Publishing Co. Ltd.

Lord Wright, M.R., Romer and Greene, L.JJ.
13th and 14th January and 7th February, 1936.

COPYRIGHT—BOOK—DAMAGES FOR INFRINGEMENT AND CONVERSION—WHETHER PLAINTIFF MUST ELECT—COPYRIGHT ACT, 1911 (1 & 2 Geo. 5, c. 43), ss. 6, 7.

Appeal from a decision of Farwell, J.

The plaintiffs published a technical book called " Heating and Ventilation," a considerable portion of which was subsequently incorporated in the third volume of a book called " The Modern Practical Plumber," published by the defendants. The defendants were unaware of this, and on proceedings being brought admitted the infringement. The plaintiffs claimed an inquiry as to damages for infringement of copyright under s. 6 of the Copyright Act, 1911, and also for conversion under s. 7 of the Act. Farwell, J., held that they must elect under which section they would proceed.

LORD WRIGHT, M.R., allowing the appeal, said that at first sight ss. 6 and 7 of the Act gave cumulative rights and remedies, s. 6 dealing with infringement of the incorporeal right of copyright defined by s. 1 (2), and s. 7 giving a claim in detinue or for damages in conversion in respect of infringing copies deemed to be the property of the owner of the copyright. Farwell, J., however, had proceeded on the footing that a claim in conversion was based on the defendant's dealing with the property as the agent of the plaintiff, who was entitled to recover the proceeds of sale from him, while the remedy under s. 6 for the wrongful act of trespass was inconsistent with this. His lordship did not agree with this. It was true that when goods were converted, the plaintiff, instead of suing in conversion, might waive the tort and sue as for money had and received: *Marsh* v. *Keating*, 1 Bing. N.C. 198; *Brewer* v. *Sparrow*, 7 B. & C. 310. If he did so, he could not treat the act as wrongful. The measure of the claim was different. In conversion, the damages were the value of the goods at the time of conversion, but in a claim for money had and received they were the actual proceeds. There might be more or less than the value. But in this case the claim under s. 7 was limited to a claim for a tort. There might have been some confusion from the fact that the action in trover or conversion was originally based on the fiction that the goods had come into the defendant's possession lawfully; this was devised to avoid a technical difficulty: *Burroughs* v. *Bayne*, 5 H. & N. 296, at p. 301. The fiction was that the defendant had found goods which the plaintiff had never lost. It was clear from *Cooper* v. *Chitty*, 1 Burr. 20, at p. 31, that there was no waiver of the conversion as a tort. It was the original trespass in wrongfully taking the goods that was waived. The fiction was abolished by the Common Law Procedure Act, 1852, s. 49, and the copyright law must be considered in relation to the law of conversion at the passing of the Copyright Act, 1911. Doubtless sometimes the plaintiff might have to choose between different remedies. So, for instance, under s. 6, he could not claim both damages and an account, since to take an account condoned the infringement (see *Neilson* v. *Betts*, 1 Eng. & Ir. App. 1, at p. 22). But there was no such irreconcilability between a claim for damages for infringement and a claim in respect of conversion, since one was for a wrong done to an incorporeal right and the other was for conversion of particular chattels, the measure of damages being in the latter case the value of the infringing copies deemed by statute to be the plaintiff's property, and in the former case, the depreciation to the plaintiff's property as a chose in action. Though in some cases there might be an overlapping of the damages, there were two causes of action. A cheap edition vulgarising a work might seriously depreciate the value of the copyright, while on the other hand, the infringer might reproduce a few copies of high intrinsic value, much higher than the damage to the copyright, which might be almost negligible. Thus, damages under s. 6 might be modified by considering the damages recoverable under s. 7, which would generally be the value of the chattels converted. But, in some cases, there might be no inter-relation, as where copyright in a dramatic or musical work was infringed both by performance and by multiplying copies. His lordship referred to *Birn Brothers* v. *Keene* [1918] 2 Ch. 281. It was true that under s. 7 the remedies in detinue and conversion might be alternative, a remedy in detinue being excluded by an order for delivery up which was an equitable remedy ancillary to an injunction and equivalent to delivery up for destruction, whereas an order in detinue gave the copyright owner possession. In either case, however, the effect was the same.

ROMER and GREENE, L.JJ., agreed.

COUNSEL: *K. Shelley; Hon. Stephen Collins*, K.C., and *Macgillivray.*

SOLICITORS: *White & Leonard; Oswald Hickson, Collier & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Odhams Press Ltd. *v.* London and Provincial Sporting News Agency (1929) Ltd.

Lord Wright, M.R., Romer and Greene, L.JJ.
6th and 7th February, 1936.

COPYRIGHT — STARTING PRICES — FIXED BY PLAINTIFFS' REPRESENTATIVES—WHETHER ORIGINAL LITERARY WORKS —WHETHER ITEMS OF NEWS—DECLARATORY JUDGMENTS.

Appeal from a decision of Eve, J. (79 SOL. J. 541).

The plaintiffs, proprietors of *Sporting Life* and *Sporting Chronicle*, claimed to be owners of the copyright in the starting prices or betting odds at the fall of the flag fixed by their representatives on the racecourse immediately after the start of any horse race in Great Britain or Ireland, and that the defendants had infringed this copyright by communicating

them systematically to other persons by way of trade. They claimed a declaration to this effect and damages. Their representatives made it their business to go into Tattersall's Ring, collecting information and making notes. When each race started, they met, compared notes, estimated the starting prices and wrote the results on a piece of paper. These were communicated to the representatives of three press agencies to whom the plaintiffs had granted the right to publish them. Immediately afterwards, a large number of bookmakers' runners got hold of them and they were publicly posted on a board on the course for the information of all concerned. By means of telephoning and signalling, the news quickly became the property of everyone on the course. The defendants, who carried on business as distributors of racing news by means of a "blower" service and gave their subscribers the starting prices of the first three horses past the post, denied that copyright could subsist in the starting prices. Eve, J., held that the entries in the notebooks of the plaintiffs' representatives were not literary compilations in which any copyright could subsist and dismissed the action.

Lord Wright, M.R., dismissing the plaintiffs' appeal, said that it had been argued that this was not a proper case for a declaratory judgment. Damages for infringement of copyright had been claimed, but no evidence had been given in support of the claim, and the appellants could not point to any specific infringement nor to any specific document in which copyright was claimed. As to the entries in the books kept by the plaintiffs' representatives, they related to races long since past, and there was little chance of future infringement; it would not be reasonable to make a declaration with regard to possible infringements which could not be foreseen. Also a declaration could not be made as to future copyright of documents not yet in existence. The position was unlike other cases where the jurisdiction under Ord. XXV, r. 5, had been exercised. Though the court could make a declaration where no consequential relief was claimed, it would not do so where the matter in issue could not arise between the parties. In this case, relief ought not to be given. This disposed of the appeal, but his lordship added that he would hesitate to agree with Eve, J., that the notebook entries were incapable of being the subject of literary copyright. In them a selection was made and figures were arrived at based not on actual facts but on judgment and estimates. This question, however, need not be decided, nor the question whether these books were compiled in circumstances vesting the copyright in the appellants.

Romer and Greene, L.JJ., agreed.

Counsel: *Cohen*, K.C., *Samuels*, K.C., and *Macgillivray*; *Hon. Stephen Collins*, K.C., *Eddy* and *L. Dunne*.

Solicitors: *Nicholson & Crouch*; *N. A. Woodiwiss & Co.*

Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Weigall *v.* Westminster Hospital (Governors).

Slesser and Scott, L.JJ., and Eve, J.
13th February, 1936.

Negligence—Plaintiff on Premises by Invitation, Express or Implied, of Occupier—Mat on Polished Floor—Slip—Plaintiff Injured.

Appeal from a decision of Horridge, J. (79 Sol. J. 560).

In February, 1934, the plaintiff visited her son who was a paying patient at the Westminster Hospital. Having done so, she accompanied the consulting surgeon into another room for an interview. There was evidence that this room was sometimes used for consultations. On the floor, which was covered with highly polished linoleum, there was a mat, which slipped when she stepped on it, so that she fell, sustaining injuries. Horridge, J., gave judgment for her for £2,826 damages.

Slesser, L.J., dismissing the defendants' appeal, said that the lady was not only on the premises, but in the room by invitation, express or implied, of the hospital authorities and was an invitee. She was paying a fee to the hospital and also to the consulting surgeon. It was implied in the contract that she should be allowed to go to see her son and to consult the surgeon, and she was entitled to have consultations in a room set apart by the hospital. She went to the room in question as having a common interest there with the hospital authorities and the surgeon. The liability of the hospital was qualified by *Hall* v. *Brooklands Auto Racing Club* [1933] 1 K.B. 205, at p. 217, where Scrutton, L.J. cited *Norman* v. *G.W.R.* [1915] 1 K.B. 584, but it was under a duty to take reasonable care to make the premises safe and to prevent danger which it knew or ought to have known. There was here evidence justifying the learned judge in holding that there was such a danger and that this was not an ordinary domestic floor, but one which for sanitary purposes was constantly rubbed and highly polished.

Scott, L.J., agreed.

Eve, J., dissented.

Counsel: *Wallington*, K.C., and *Fearnley-Whittingstall*; *van den Berg*, K.C., and *G. Paull*.

Solicitors: *Trollope, Winckworth, Crump & Sprott*; *Thomas Cooper & Co.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Appeals from County Courts.

In re Gozzett.

Lord Wright, M.R., Romer and Greene, L.JJ.
31st January, 1936.

Bankruptcy — Nurseryman — Improvements — Loan — Transfer of Charge to Lenders—Cost of Improvements—Not discharged before Bankruptcy—Improvement of Land Act, 1864 (27 & 28 Vict., c. 114).

Appeal from a decision of the Divisional Court in Bankruptcy allowing an appeal from Warrington County Court (79 Sol. J. 964).

G, a nurseryman, wishing to add to the glasshouses on his freehold land, approached M & Co., Ltd., glasshouse builders, who indicated that they could obtain him a loan secured on his land, subject to the approval of the Ministry of Agriculture, and an estimate having been placed before him in April, 1934, G wrote that he would accept it, subject to his obtaining the loan suggested. M & Co. took steps to obtain it for him, and on the 27th September, 1934, G entered into a provisional contract with the Agricultural Mortgage Corporation, Ltd. The deed, after referring to the improvements he desired to make by means of the money to be advanced by the corporation, recited that those moneys should be charged in accordance with the Improvement of Land Acts on the lands mentioned in the deed. Clause 1 provided that after the improvements had been sanctioned under the Acts the contract should be absolute. Clause 2 provided for the assignment to the corporation of any absolute charge to which G might become entitled in respect of the sanctioned improvements. Clause 5 provided that the sums advanced should be charged upon the land. Clause 7 provided that upon the Minister making the absolute order charging the land with the cost of the improvements, G should transfer it to the corporation who engaged to pay him the sums sanctioned by the Minister in respect thereof. On the 28th September, 1934, the Minister made a provisional order sanctioning the proposed improvements to be executed at a cost of £1,153 14s. and charging the land with that sum. Endorsed on the order was an assignment by G to the corporation of this charge conferred on him by virtue of s. 27 of the Improvement of Land Act, 1864. M & Co. did the work, and in January, 1935, wrote to the corporation regarding payment, receiving the reply that when the Ministry issued the absolute order they would make arrangements for the completion of the loan

and would have no objection to paying the account direct if G had no objection. On the 11th March, 1935, M & Co. wrote to G asking his authorisation for a direct payment to them by the corporation, but on the same day a receiving order was made against G. The trustee in bankruptcy refused to authorise such payment. The Divisional Court held that, in taking the land, he was not bound to pay to M & Co. the moneys which G had agreed to borrow from the corporation. M & Co. appealed.

Lord Wright, M.R., dismissing the appeal, said that the real question was whether M & Co. could be treated as if they were secured creditors though they were unsecured creditors and had no lien. It was argued that they should be so treated as a matter of honesty on the principles laid down in *Ex parte James*, L.R. 9 Ch. 609, applying equity, not in the technical sense, but in the wider and more popular sense of natural justice between man and man. But if the court went beyond the true principles of law, the bounds might be hard to draw, and everything might be reduced to vagueness resulting in unfairness infringing the legal rights of others. His lordship considered *Ex parte James*, *supra*; *In re Tyler* [1907] 1 K.B. 865, at p. 871; *In re Hall* [1907] 1 K.B. 875, and *In re Thellusson* [1919] 2 K.B. 735, and said that they were not on the same lines as this case. M & Co. were unsecured creditors and the trustee had done nothing to create that position which was due to their failure to take the ordinary prudent step of obtaining a charge. In so far as they helped to arrange the loan, they did so simply as intermediaries.

Romer and Greene, L.JJ., agreed.

Counsel: *C. N. Davis* and *A. Anderson*; *Stable*, K.C., and *A. Walmsley*.

Solicitors: *Richardson, Sadler & Co.*, agents for *C. W. & F. H. Toone*, of Loughborough; *Hamlins, Grammer & Hamlin*, agents for *R. G. Dell*, of Manchester.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Kenyon *v.* Darwen Cotton Manufacturing Co. Ltd.

Slesser and Scott, L.JJ., and Eve, J.
30th and 31st January and 14th February, 1936.

Master and Servant—Manufacturing Company—Mill Closed—Scheme for Re-opening—Shares Purchased by Employees—Deductions from Wages—Truck Act, 1831 (1 & 2 Will. 4 c. 37).

Appeal from Blackburn County Court.

In 1931 the company were obliged to close a mill, but, after consultations with their ex-employees, a scheme was initiated in 1932 whereby the operatives might find capital to finance the company by subscribing for shares either by lump sums or sums proportionate to their wages, paid weekly out of their wages in extremely small instalments. The plaintiff went into the company's employment in September, 1932, soon afterwards signing two documents, one requesting the allotment of shares and the other agreeing that they should be paid for out of wages earned, and requesting that the payment should be deducted from the wages each week. Till November, 1932, the practice was to hand each operative loose coins equivalent to the amount of his net wages, after all deductions had been made together with an envelope containing coins equivalent to the share subscription then due from him, which the operative then handed to a clerk sitting beside the clerk paying out wages in exchange for a receipt for "the following amount on account of payment for your shares." From November onwards all that was handed to the operative was the amount of his wages, less all deductions and a receipt. The plaintiff now claimed to recover the deductions from her wages amount to £9 18s. 3d. The defendants counter-claimed to set off the amount of the purchase price of the shares allotted to her, being £11 9s. 11d. The learned county court judge held that the contract was not invalidated by the Truck Acts and gave judgment for the defendants for £1 11s. 8d.

Slesser, L.J., allowing the plaintiff's appeal, said that the question arose under s. 4 of the Truck Act, 1831. No difference of principle arose between the two methods used. The learned judge had erroneously applied the test that in his view there would have been no breach of contract had the plaintiff taken all the coins out of the pay-room and returned later in the day with other coins of equivalent value, paying them to the company. The test was whether the wages were actually paid in current coin of the realm. His lordship considered that they were not. As to the subsequent direct deductions, the fact that the plaintiff directly or inferentially acquiesced was no defence. Under s. 1 of the Truck Act, 1831, this contract was illegal, null and void. The plaintiff owed the continuation of her employment to this contract which, taken as a whole, was one whereby she received consideration for her labour in part otherwise than by payment of wages in current coin of the realm. Section 3 declared payments otherwise than in current coin to be illegal, null and void, and s. 4 entitled the plaintiff to recover so much of her wages as had not been paid in current coin. As to the defendants' counter-claim for the price of the shares, it was unjustifiable to distinguish between the contract to buy shares from the contract to pay the purchase price out of wages. They were not severable and the whole contract was illegal. In spite of the provisions of s. 4, s. 1 completely destroyed the contract of employment.

Scott, L.J., and Eve, J., agreed.

Counsel: *Sir William Jowitt*, K.C., and *Basil Nield*; *A. S. C. Carr*, K.C., and *Ormerod*.

Solicitors: *L. Bingham & Co.*, agents for *T. Holden, Blanthorne & Davies*, of Blackburn; *Haslam & Sanders*, agents for *Hindle, Son & Cooper*, of Darwen.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Burke *v.* Spicers Dress Designs.

Clauson, J. 3rd and 4th February, 1936.

Copyright—Dress Design—Garment Made from Sketch—Unauthorised Copies—Whether Dress an Original Work of Artistic Craftsmanship—Copyright Act, 1911 (1 & 2 Geo. 5, c. 46) s. 22.

The first plaintiff made a design for a dress, and the second plaintiffs, a company of which she was sole director, made the dress by their workpeople. In this action they claimed that the defendants, in copying it without their consent and selling copies, had infringed their copyright in the design and the dress and sought an injunction.

Clauson, J., in giving judgment, said that the dress had been shown to him on a young lady of appropriate figure and colouring, but if instead it had been held up by the usher it might not have been so obvious that it followed the lines of the sketch. His lordship referred to s. 22 of the Copyright Act, 1911, under which the Act did not apply to designs capable of registration under the Patents and Designs Act, 1907, unless they were not intended to be used as models to be multiplied by any industrial process. If the complaint had been that the defendants had copied the original sketch by posing a lady of similar type in a similar frock in a similar attitude that might have been a case for an injunction (see *Bradbury Agnew & Co.* v. *Day*, 32 T.L.R. 349), but they had only made a frock which when posed on a lady of appropriate colouring and figure might represent a living picture of the sketch. The court had to look at the frock by itself and then it was not apparent that it was a copy of the design. If it had been registered under the Patent and Designs Acts, 1907 and 1919, there might have been a right to restrain infringement of the design. The plaintiff company claimed copyright in the dress on the ground that it was an original work of artistic craftsmanship, but they had only made a work of

skilled craftsmanship. The artistic element came from the sketch and, therefore, so far as the dress was artistic it was not original. His lordship said he would not consider what the position would have been if the first plaintiff had both made and designed the dress. Having regard to the definition of "artistic" in the Oxford English Dictionary, the garment was an article of commercial value which went but a little way "to gratify the aesthetic emotions." It was the *ensemble* of the lady and the frock which gratified those emotions. The action must fail.

COUNSEL: *Hon. Stephen Collins*, K.C., and *K. Shelley*; *Macgillivray* and *P. Bevan*.

SOLICITORS: *Arthur Benjamin & Cohen*; *Church, Rackham & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

British & French Trust Corporation Ltd. *v.* New Brunswick Railway Co.

Hilbery, J.

18th and 19th December, 1935, and 16th January, 1936.

CONTRACT—BONDS—PROMISE TO PAY HOLDER "£100 STERLING GOLD COIN OF GREAT BRITAIN"—NATURE OF OBLIGATION.

The plaintiff company were the holders of 992 first mortgage gold bonds issued by the defendants on the 1st August, 1884, which became due for repayment on the 1st August, 1934. In each bond, it was provided *inter alia* that the plaintiffs promised to pay the bearer or registered holder of the bond on the due date £100 sterling gold coin of Great Britain of the then-existing standard of weight and fineness at their agency in London. On the 15th March, 1935, the plaintiffs presented the bonds in London, demanding a sum which represented the price in London in sterling calculated as at the 1st August, 1934, of 12,327·447 grains of gold of the standard of fineness specified in Sched. I to the Coinage Act, 1870. Alternatively, the plaintiffs demanded payment of £99,200 in current gold coin of Great Britain. The defendants having refused to make either payment, but having tendered payment of £100 sterling for each bond, the plaintiffs accordingly brought this action.

HILBERY, J., said that it was in his opinion clear that the contract contained in the bond was one for repayment in money of a loan. It was not a contract for delivery of bullion. It was a promise to pay on a particular day the sum of £100. If the contract were one for the payment of a debt and not for the delivery of gold *in specie*, the plaintiffs could not maintain their alternative claim for damages for non-delivery of the gold coins, if the defendants had offered and tendered that which was legal tender for the payment of the indebtedness as created by the bond. The question that must be resolved on the construction of the bond was primarily whether the plaintiffs were right in saying that the words of the bond, whereby the defendants undertook to pay £100 sterling gold coin of Great Britain of the standard of weight and fineness which was the standard on 1st August, 1884, indicated the measure of what they were to be paid, or, as the defendants contended, the mode in which payment was to be made. It was a canon of construction that the words of a contract must, if possible, be given their natural meaning. In the contract itself the only place in which what had been called "the gold clause" appeared was, significantly enough, in the repayment clause. Nowhere else in the bond did the words about gold coin appear. The whole of the bond appeared to be impressed with the character of a bond for repayment of £100 sterling. *Feist* v. *Société Intercommunale Belge d'Electricité* [1934] A.C. 161, which the plaintiffs had cited in support of their contentions, appeared to him (his lordship) rather to support his view of the construction of the bonds. Every one of the considerations which had led to what Lord Russell of Killowen in that case called a construction which strained the words of the bond, was absent in the present case. He could find no reason in the present case for not giving the words in the bond before him their literal and ordinary meaning. If the decision in *Feist's Case, supra*, governed the construction, or gave effect to what business men understood to be the meaning, of the bonds in the present case, then it was plain that the holder of any one of the bonds in the present action was entitled to receive £183 3s. 5d. sterling on 1st August, 1934. Yet the plaintiffs were still able to buy the bonds at £95 on 15th August, 1934. The plaintiffs had also contended that, as in an earlier action they had on the basis claimed here recovered judgment against these defendants in respect of another bond of the same series as those in this case, and as the defendants had entered no defence to that action, the defendants were estopped from setting up any defence to the present action. Where the plea of estoppel by record was relied on, the record itself must establish the estoppel, the parties being the same (*Seddon* v. *Tutop* (1796), 6 Term Rep. 607). In his (his lordship's) view, each of the bearer bonds for £100 sterling issued by the defendants gave to its holder, in the event of non-payment of the £100 on the due date, a distinct and separate cause of action to recover £100. In his view, therefore, the plea of estoppel was not established. There must be judgment for the defendants.

COUNSEL: *Harold Christie*, K.C., and *H. S. G. Buckmaster*, for the plaintiffs; *Valentine Holmes* for the defendants.

SOLICITORS: *Allen & Overy*; *Linklaters & Paines.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Kelly *v.* Allen.

Atkinson, J. 15th and 16th January, 1936.

SUNDAY OBSERVANCE—PERFORMANCES OF ALL-IN WRESTLING ON A SUNDAY—ADMISSION OF PUBLIC AGAINST PAYMENT—PROMOTER'S LIABILITY TO PENALTY—SUNDAY OBSERVANCE ACT, 1781 (21 Geo. 3, c. 49), s. 1.

Action for a penalty under the Sunday Observance Act, 1781.

The plaintiff, acting as a common informer, sued the defendant as alleged promoter of performances of all-in wrestling held at the Chelsea Palace Theatre on the 30th June and the 7th and 14th July, 1935, respectively. The defence was a plea of "not guilty" by statute. It was not contested that the performances, being held on Sundays, and ones to which the public had to pay to go in, came within s. 1 of the Act of 1781.

ATKINSON, J., said that, as a result of certain actions brought to recover penalties for other performances, the propriety of Sunday entertainments had been considered by Parliament so recently as 1932. As a consequence, the Sunday Entertainments Act, 1932, was passed permitting certain forms of entertainment on Sundays, but otherwise leaving the Sunday Observance Act, 1781, as it was. Therefore the considered view of Parliament, not merely so long ago as 1781, but also so recently as 1932, was that entertainments other than those expressly permitted by the Act of 1932 were undesirable on Sundays. It was obviously to check them that penalties were permitted to be recovered by members of the public. It had been said that judges ought to regard these actions with disfavour. Something might have been said for that view before the passing of the Act of 1932, but there was no reason why these actions should be regarded as different from any other actions now that Parliament had so recently approved of them. It was the duty of a judge to regard an action by a common informer just as he regarded any other action, and if he were satisfied that the plaintiff's case was proved he had no option but to give effect to the provisions of the Act. There was no doubt that persons responsible for the performances were liable to the penalties. The framers of the section had thought that they were covering anyone in any way responsible for managing and controlling

performances and assisting in even such a humble way as door-keeping or selling tickets, and, in his opinion, anyone who took part, or assisted, in the management or conducting of the entertainments was within the section. It would be strange if a girl selling tickets in the box-office could be sued for £50 while someone who assisted in the management was able to escape. The section did not mean that a person only managed or controlled an entertainment if he were the sole manager. It was enough if he assisted. On all the evidence, he (his lordship) was satisfied that the defendant was running the performances, paying the rent and the staff; that he could have stopped the performances at any time; that he was the ultimate manager and the person mainly responsible for the holding of those entertainments; and that he was liable for the penalties. He (his lordship) also thought that the defendant was the keeper of the premises, and he would give leave to amend the statement of claim accordingly. The plaintiff was entitled to have judgment for £100 in respect of each of three performances.

COUNSEL: *Gerald Gardiner* and *Russell Lawrence*, for the plaintiff; *J. P. Valetta* and *Elliott Batt*, for the defendant.

SOLICITORS: *Lewis & Co.*; *J. Albert Davis & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

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During the hearing of a case in the Commercial Court, says *The Times*, the facts of which were not of general interest, counsel took an objection that a point taken by the other side was not strictly covered by the pleadings, and Mr. Justice Branson, who was trying the case, said that the question of pleadings in that court seemed to be getting into an extraordinary position. The Commercial Court had been founded to get rid of technicalities, but latterly it seemed to have been drifting back to the particularity of any other court. During the last year or so there had been a tendency to take technical points, and in his view it was a tendency to be deprecated.

Parliamentary News.

Progress of Bills.

House of Lords.

Firearms (Amendment) Bill.
Read Second Time. [13th February.
Hours of Employment (Conventions) Bill.
Read Third Time. [18th February.
Liverpool Corporation Bill.
Read First Time. [12th February.
Shops Bill.
Read Second Time. [13th February.
Trial of Peers (Abolition of Privilege) Bill.
Read First Time. [18th February.
Tring Gas Bill.
Read Second Time. [13th February.
Unemployment Assistance (Temporary Provisions) (Extension) Bill.
Read Third Time. [18th February.
Voluntary Hospitals (Paying Patients) Bill.
Read Third Time. [13th February.

House of Commons.

British Shipping (Continuance of Subsidy) Bill.
Read First Time. [13th February.
Cirencester Gas Bill.
Read First Time. [17th February.
Coventry Corporation Bill.
Read Second Time. [19th February.
Education Bill.
Read Second Time. [13th February.
Education (Scotland) Bill.
Read Second Time. [18th February.
Great Western Railway (Additional Powers) Bill.
Read Second Time. [13th February.
London and Middlesex (Improvements, etc.) Bill.
Read Second Time. [19th February.
London Midland and Scottish Railway Bill.
Read Second Time. [19th February.
Milk (Extension of Temporary Provisions) Bill.
Read First Time. [18th February.
Ministry of Defence (Creation) Bill.
Withdrawn. [14th February.
Ministry of Health Provisional Order (Bedford Joint Hospital District) Bill.
Read Second Time. [14th February.
Ministry of Health Provisional Order (Mid-Sussex Joint Hospital District) Bill.
Read Second Time. [14th February.
Ministry of Health Provisional Order (Saint Albans Joint Hospital District) Bill.
Read Second Time. [14th February.
Unemployment (Northern Ireland Agreement) Bill.
Read First Time. [13th February.

Questions to Ministers.

BUSINESS OF COURTS COMMITTEE (PATENTS).

Sir A. WILSON asked the Attorney-General whether it is proposed to set up a committee, as recommended by the Business of Courts Committee, at paragraph 36 of their final report, to consider whether want of subject matter should be a statutory ground of objection to the grant of a patent.

Major DAVIES: I have been asked to reply. My right hon. and learned Friend does not read the recommendation of the Business of Courts Committee on this matter to be that a committee should be set up to deal with it. The Lord Chancellor is in communication with the Board of Trade upon this and such other questions arising upon the report of the committee as concern the Board of Trade. [13th February.

HIGH COURT OF JUSTICE (OFFICIAL SHORTHAND WRITERS).

Lieut.-Colonel Sir ARNOLD WILSON asked the Attorney-General whether any decision has been reached as to the appointment of official shorthand writers in the High Court of Justice, as recommended by the Royal Commission on the Despatch of Business at Common Law, in paragraph 254 of their report.

Major GEORGE DAVIES (Vice-Chamberlain of the Household): I have been asked to reply. The Lord Chancellor is arranging for the appointment of a small committee to deal with what the Royal Commission described as the "technical and

administrative problems to be solved." The composition of the committee will be announced as soon as replies have been received from those who have been invited to serve upon it. [13th February.

CROWN PROCEEDINGS COMMITTEE.

Mr. DAY asked the Attorney-General whether, in view of the present method required in any legal procedure or action by a member of the public against the Crown, he will consider introducing legislation to give effect to the findings of the committee appointed by the Lord Chancellor and the Attorney-General in December, 1921, to consider the position of the Crown as a litigant.

THE SOLICITOR-GENERAL (Sir Donald Somervell): I understand that the report to which the hon. member refers is that of the Crown Proceedings Committee, which was presented in 1927. The report of this committee raised questions of considerable controversy, but expressed no opinion upon them. I do not think that I can add anything further to what my hon. and learned Friend said on the 6th December, 1933, namely, that it is not considered desirable to introduce legislation upon this subject unless it is reasonably clear that it will receive general consent in both Houses of Parliament. [17th February.

LOTTERIES (CROSS-WORD PUZZLES).

Sir W. DAVISON asked the Home Secretary whether his attention has been drawn to the confusion which has arisen as to whether cross-word puzzle competitions in the Press are to be considered as lotteries within the meaning of the Betting and Lotteries Act, 1934; and whether he will bring in a short explanatory Bill making clear that the Lotteries Act of 1934 is not applicable to cross-word or picture-puzzle competitions.

Mr. LLOYD: The question whether any particular competition is unlawful is a legal question which could be decided only by a competent court in the light of the particular facts, and my right hon. Friend does not see his way to propose legislation for the purpose of legalising all competitions of the kind referred to. [17th February.

STATUTE OF LIMITATIONS.

Commander LOCKER-LAMPSON asked the Attorney-General whether, as the Statute of Limitations applies only to civil actions, he will now consider taking steps to allow it to apply to minor criminal offences also.

THE SOLICITOR-GENERAL: A limitation in the time in which proceedings may be instituted in the case of criminal offences which may be punishable summarily is already imposed by section 11 of the Summary Jurisdiction Act, 1848. There are in addition special limitations imposed in a number of other cases by Statutes. [17th February.

TITHE RENTCHARGE (ROYAL COMMISSION'S REPORT).

SIR FRANCIS ACLAND asked the Prime Minister whether he can give any precedent for withholding from publication for three months the report of a Royal Commission; and, if not, whether he will give instructions for the appropriate department to publish without further delay the Report of the Royal Commission on Tithe Rentcharge.

THE PRIME MINISTER: Reports of Royal Commissions have been published at varying intervals after they have been made, although I have not found any case within recent years where so long a period as three months has elapsed between completion and publication. In the case of the Report of the Royal Commission on Tithe Rentcharge, the interval between completion and publication, has, I agree, been somewhat prolonged, but this has been with the object of elucidating certain matters arising out of the report for the convenience of all concerned. The report will be published by the end of next week. [19th February.

Rules and Orders.

DRAFT OF AN ORDER IN COUNCIL DECLARING THAT REGISTRATION OF TITLE TO LAND IS TO BE COMPULSORY ON SALE IN THE ADMINISTRATIVE COUNTY OF MIDDLESEX ON AND AFTER THE 1ST JANUARY, 1937.

At the Court at the day of 1936.

PRESENT,

The King's Most Excellent Majesty in Council.

Pursuant to section 120 of the Land Registration Act, 1925, His Majesty by and with the advice of His Most Honourable Privy Council is pleased to order and declare, and it is hereby ordered and declared, as follows:—

Registration of title to land is to be compulsory on sale in the Administrative County of Middlesex on and after the first day of January, nineteen hundred and thirty-seven.

Societies.

The Solicitors' Managing Clerks' Association.

ANNUAL GENERAL MEETING.

This Association held its annual general meeting in The Law Society's Court Room, on the 13th February, and Mr. SYDNEY H. VERE, the president, reviewed its work for the past year. The Association had, he said, given its views on certain matters under consideration by Earl Peel's Royal Commission on the Dispatch of Business at Common Law, in a memorandum prepared by a special committee after many evening meetings. At the last annual general meeting a resolution had been passed directing the council to form a benevolent fund. As the Association could not use its own funds in connection with any benevolent institution, the new fund had been established on a purely voluntary basis, with the object of assisting past and present members who were in need of help through ill-health, old age, accident or other circumstances. Mr. D. T. Lark had undertaken to act as treasurer.

The course of lectures by Mr. A. F. Topham, K.C., on the 1925 Property Statutes had perhaps been a bold step to take, since ten years had almost elapsed from the time when the Acts came into force. The lectures had, however, attracted considerable attention; over a hundred tickets had been sold to non-members and the attendance had been well maintained throughout. They had been held primarily for the benefit of the members, and arrangements had been made with the proprietors of THE SOLICITORS' JOURNAL to purchase the copyright, so that country members could read verbatim reports of the lectures week by week. Not only had they been a success, but they had also attracted a number of new members. Lectures by members of the Bar in the Inns of Court, presided over by His Majesty's judges, had also been well attended, and successful courses for law students had been held on Monday evenings in the Lord Chief Justice's court. The examinations held after each course were attempted by a large number of students, the majority of whom wrote very good papers. The President appealed, however, for greater support of the members' meetings, which, he said, gave members an excellent opportunity of meeting one another and discussing the practical problems of their offices, besides hearing papers read and debating various subjects. A recent discussion had taken the form of a debate on the question "That the decision in *Mildmay* v. *Fender* was not a correct one." The branch at Bournemouth had continued to prosper under its energetic secretary, Mr. A. E. Read.

The Association had recently received its one-twelfth share of the residuary estate of the late Lord Riddell. This magnificent bequest, with no conditions attached to it, would give many opportunities to further the objects and aims of the Association. Of the sum appearing on the balance-sheet as on deposit, £23,000 had now been invested on brokers' advice, yielding a gross income of about £840. A proposal to move into more commodious and important offices was still actively engaging the attention of a special committee. The Council also had in mind employing a paid official to relieve the present honorary officials of some of their arduous duties. No step was to be taken for the time being to amend the existing objects as governed by the memorandum of association. The Council were actively investigating the possibility of arranging for *The Solicitors' Clerks' Gazette* to be published monthly instead of quarterly. The President paid a tribute to Mr. George Elphick for his long and valuable service as honorary treasurer during the past twenty-five years.

No summer outing had been held during the past year, as the weather had been too bad, but the Festival Dinner had produced a record attendance of about 430 people. For the first time ladies had sat at the top table; the arrangement had been a great success, and the President hoped it would be followed. The smoking concert had also been highly successful.

Law Students' Debating Society.

At a meeting of the Society, held at The Law Society's Court Room, on Tuesday, 11th February (Chairman, Mr. R. W. Jackling), the subject for debate was: "That this House deplores the decision of the Judicial Committee in the case of *North Western Utilities Ltd.* v. *London General Accident & Guarantee Co. Ltd. & Others* [1936] A.C. 108." Mr. R. Landman opened in the affirmative; Mr. F. G. Timmins opened in the negative; Mr. P. W. Iliff seconded in the affirmative; and Mr. G. Roberts seconded in the negative. The following members also spoke: Messrs. C. A. G. Simkins, E. V. E. White, C. J. de S. Root, Q. B. Hurst, J. R. Campbell-Carter, G. A. Russo, J. P. R. Oates, and R. Stock. The opener having replied, the motion was lost by two votes. There were eighteen members and one visitor present.

The Birmingham Law Society.

The Annual General Meeting of the Birmingham Law Society will be held at the Library on Wednesday, the 26th February, at 3 o'clock in the afternoon, to receive the report of the Committee for 1935 and the Treasurer's accounts for the same period; to instal the President and Officers for 1936; to elect Auditors for 1936; to fill vacancies on the Committee; and for the transaction of other business.

The retiring members of the Committee are Messrs. E. R. Bickley, W. C. Mathews, G. A. C. Pettitt, G. Tyndall, J. F. West, K. V. Hooper, P. J. Slater and L. A. Smith, of whom the five first named have been nominated by the Committee for re-election, and the three last named are ineligible for re-election until the Annual Meeting in 1937.

The Law Library will be closed to readers and no books will be issued from 2.45 p.m. until 4.30 p.m. next Wednesday.

The Hardwicke Society.

A meeting of the Society was held on Friday, 14th February, at 8.15 p.m., in the Middle Temple Common Room, the President Mr. T. H. Mayers, in the chair. Mr. Walter Stewart moved: "That the time has come to admit the success of the Russian experiment." Mr. L. Caplan opposed. There also spoke Mr. Symmons, Mr. Marcus Samuel, M.P. (visitor), Mr. Patel, Mr. Sharp, Mr. Edwards, Mr. McNabb, Mr. Thorne, Mr. Llewellyn Thomas (hon. secretary), and Prince L. Lieven. The hon. mover having replied, the House divided, and the motion was lost by five votes.

United Law Society.

A meeting of the United Law Society was held in the Middle Temple Common Room on Monday, the 17th February, at 7.45 p.m. Mr. W. M. Permewan proposed the motion:—"That *Thomas* v. *Sawkins* [1935] 2 K.B. 249, was wrongly decided." Mr. A. J. G. Logan opposed. Miss Colwill, Messrs. Pritchard, Smith and Vine-Hall also spoke. After Mr. Permewan had replied, the motion was put to the house and lost by one vote. There were thirteen members present.

University of London Law Society.

The University of London Law Society held its weekly meeting on Tuesday, 11th February, when the public business of the evening was: "Members' Papers." Papers were read by Mr. L. Lichtenstein on "Some Aspects of English and Continental Judiciary," Mr. K. Chand (Hon. Secretary) on "Law and Social Needs" and Mr. D. Bilimoria on "Ought Criminal Law to be Codified." A discussion followed. Those who spoke were: Messrs. Garner, Reed, Polielokhoff, Gill.

Solicitors' Benevolent Association.

The monthly meeting of the Directors was held on the 5th February at No. 60, Carey-street, London, W.C.2. The meeting passed a resolution of condolence with the King and other members of the Royal Family in the death of King George. The following Directors were present: Mr. R. C. Nesbitt (in the chair), Sir Edmund Cook, C.B.E., and Messrs. F. E. F. Barham, G. S. Blaker (Henley), P. D. Botterell, C.B.E., W. Sefton Clarke (Bristol), T. G. Cowan, F. J. F. Curtis (Leeds), T. S. Curtis, G. C. Daw (Exeter), R. Epton (Lincoln), A. G. Gibson, G. Keith, C. W. Lee, J.P., C. G. May, R. B. Pemberton, W. N. Riley (Brighton), F. S. Stancliffe (Manchester), A. B. Urmston (Maidstone), and the Secretary. £583 16s. was distributed in grants to necessitous cases; eleven new members were admitted; Mr. A. W. Turnbull was elected a Director at Shrewsbury; and other general business was transacted.

General Council of the Bar.

ELECTION RESULT.

The following candidates have been declared elected to fill the twenty-four vacancies upon the Council: J. M. Gover, K.C., Hon. Sir Reginald Coventry, K.C., F. K. Archer, K.C., Charles Doughty, K.C., W. P. Spens, O.B.E., K.C., M.P., W. C. Cleveland-Stevens, K.C., G. Justin Lynskey, K.C., Arthur Morley, O.B.E., K.C., F. J. Tucker, K.C., C. Paley Scott, K.C., and D. P. Maxwell Fyfe, K.C., M.P.

OUTER BAR.—Wilfrid M. Hunt, C. N. Tindale Davis, Cecil W. Turner, J. H. Stamp, George F. Kingham, J. Lhind Pratt, A. W. Cockburn, W. A. Macfarlane, J. Reginald Jones and Gerald Thesiger.

UNDER TEN YEARS' STANDING AT THE BAR.—R. E. Manningham-Buller, E. H. Butcher and G. R. Upjohn.

Legal Notes and News.

Honours and Appointments.

At a special meeting of the Faculty of Advocates in Edinburgh last Tuesday, Mr. JAMES KEITH, K.C., was unanimously elected Dean of the Faculty in place of the late Sir William Chree, K.C.

Honiton Town Council have decided to admit as first honorary freeman of the borough Mr. C. N. TWEED for his services as Deputy Town Clerk, Town Clerk, Councillor and Alderman. Mr. Tweed was admitted a solicitor in 1899.

Finsbury Metropolitan Borough Council have promoted Mr. J. E. ARNOLD JAMES, Deputy Town Clerk, to the position of Town Clerk and Solicitor. Mr. James, who was admitted a solicitor in 1918, will assume his new office on 1st July next. He succeeds Mr. D. E. Richards, who is retiring.

Mr. W. T. ISAAC has been appointed Senior Assistant Solicitor to Walsall Town Council. Mr. Isaac was admitted a solicitor in 1931.

Mr. JOHN HINDLE FISHER, solicitor, of Doncaster, has been appointed Assistant Solicitor in the Town Clerk's Department of Cardiff City Council. Mr. Fisher was admitted a solicitor in 1934.

Mr. A. P. GARDNER, solicitor, Stonehaven, and Mr. JOHN FALCONER, solicitor and county clerk of Kincardine, have been appointed Honorary Sheriffs-Substitute at Stonehaven.

Mr. STANLEY BENNETT, of Frodsham, Cheshire, has been appointed Clerk to the Runcorn Rural Council.

Mr. NORMAN CATCHPOLE, of Ipswich, has been appointed Temporary Qualified Assistant in the Department of the Clerk and Solicitor of the Urban District Council of Southall-Norwood.

Professional Announcements.

(2s. per line.)

SOLICITORS & GENERAL MORTGAGE & ESTATE AGENTS ASSOCIATION.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office: 12, Craven Park, London, N.W.10.

Notes.

The death occurred at Grimsby last Monday of Mr. John Broadhead, aged eighty, who for over fifty years was assistant magistrate's clerk.

The Council of the Coroners' Society of England and Wales met at the Holborn Restaurant in London last Wednesday to discuss the report of the Departmental Committee on Coroners.

Mr. D. C. L. Murray, assistant secretary of the Council for the Preservation of Rural England, has been appointed general secretary of the International Federation of Housing and Town Planning.

As a token of respect to the memory of His Majesty King George V the Banquet of the City of London Solicitors' Company has been postponed until Monday, 25th May, when the Lord Mayor has kindly consented to make the Mansion House available.

At a special general meeting of the Society of Solicitors in the Supreme Courts of Scotland (Mr. D. Lind Addison-Smith, President, in the chair), the following were admitted members of the Society: Mr. Francis Archibald Roland McNab, Mr. Douglas Hood James, M.A., LL.B., and Mr. Lawrence Steedman Millar, M.A., LL.B.

An ordinary meeting of the Medico-Legal Society will be held at Mansion House, 26, Portland-place, W.1, on Thursday, 27th February, at 8.30 p.m., when a paper will be read by Mr. H. N. Linstead, on "Statutory safeguards against poisoning—the work of the Poisons Board." Members may introduce guests to the meeting on production of the member's private card.

The Solicitors' Managing Clerks' Association announces the following forthcoming lectures: "Some points on bankruptcy and the effect of recent decisions thereon," by Mr. G. F. Kingham; Chairman, The Hon. Mr. Justice Clauson; in the Middle Temple Hall, on Friday, 6th March, at 7 p.m. "Some recollections of the administration of justice in Ireland," by Mr. Maurice Healy, K.C.; Chairman, The Right Hon. Viscount Finlay, K.B.E.; in the Inner Temple Hall, on Friday, 3rd April, at 7 p.m.

A member of The Law Society complained recently that he had been assessed to income tax in respect of the whole of two premiums paid to him by articled clerks, notwithstanding

that there were provisions in the articles for the return of portions, if not the whole, of the premiums in certain events, and that the local Inspector of Taxes had refused to allow the premiums to be spread over the period of the articles. The Council, says *The Law Society's Gazette*, have been in communication with the Inland Revenue authorities and understand that the authorities agree that premiums paid by articled clerks should, for income tax purposes, be spread over the period of the articles and are instructing their inspectors accordingly.

A preliminary meeting was held on the 19th February, 1936, of the members of the Committee appointed by the Board of Trade to consider and report whether any, and if so what, changes in the existing law relating to the carrying on of the business of insurance are desirable in the light of statutory provisions relating to compulsory insurance against third party risks and by employers against liability to their workmen. It was decided that future meetings should be held in private. The Committee decided to commence hearing evidence immediately. Persons desiring to communicate with the Committee should write to the Secretary to the Committee on Compulsory Insurance at the Board of Trade, Great George-street, Westminster, S.W.1.

Mr. Justice Goddard said at Nottingham Assizes last Wednesday, says *The Times*, that the work throughout the Midland Circuit had been unusually light. "I have found very little to do anywhere," he said, "and it is a remarkable fact that on this circuit, so far, crime has been so light that I have had to pass only two short sentences of penal servitude, while the sentences of imprisonment, all told, come to only fifty-two months. That does not include Borstal sentences. A most difficult thing is the number of youthful offenders. It really is a great problem which faces His Majesty's judges as to what is to be done with these cases. I suppose some day some method will be found of dealing with juvenile offenders perhaps more satisfactorily than is at present done."

Wills and Bequests.

Mr. George Henry Evans, solicitor, of Chester, left £15,278, with net personalty £15,197.

Mr. Richard Hancock, solicitor, of Callington, left £11,990, with net personalty £10,177.

Mr. Ernest Bright Croasdell, solicitor, of Highgate, Town Clerk of Hornsey, left £11,925, with net personalty £11,476.

Mr. Gilbert Cowie, solicitor, of Birkenhead and of Liverpool, left £13,104, with net personalty £12,464.

Mr. Crompton Llewelyn Davies, solicitor, of Kensington and Mincing-lane, left £19,073, with net personalty £16,260.

Mr. Thomas Henry Field Lapthorn, J.P., solicitor, of Southsea, and of Seaview, Isle of Wight, left £88,512, with net personalty £83,556.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT I.	GROUP I. MR. JUSTICE EVE. Witness Part II.	MR. JUSITCE BENNETT. Non-Witness
	Mr.	Mr.	Mr.	Mr.
Feb. 24	Andrews	Blaker	*Andrews	Ritchie
,, 25	Jones	More	More	Andrews
,, 26	Ritchie	Hicks Beach	*Ritchie	More
,, 27	Blaker	Andrews	Andrews	Ritchie
,, 28	More	Jones	*More	Andrews
,, 29	Hicks Beach	Ritchie	Ritchie	More

DATE.	GROUP I. MR. JUSTICE CROSSMAN. Witness. Part I.	MR. JUSTICE CLAUSON. Witness. Part I.	GROUP II. MR. JUSTICE LUXMOORE. Non-Witness.	MR. JUSTICE FARWELL. Witness. Part II.
	Mr.	Mr.	Mr.	Mr.
Feb. 24	*More	*Jones	Hicks Beach	Blaker
,, 25	*Ritchie	*Hicks Beach	Blaker	*Jones
,, 26	*Andrews	*Blaker	Jones	Hicks Beach
,, 27	*More	Jones	Hicks Beach	*Blaker
,, 28	Ritchie	*Hicks Beach	Blaker	Jones
,, 29	Andrews	Blaker	Jones	Hicks Beach

* The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 5th March, 1936.

	Div. Months.	Middle Price 19 Feb. 1936.	Flat Interest Yield.	‡Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	115¼	3 9 5	3 0 2
Consols 2½%	JAJO	85½	2 18 6	—
War Loan 3½% 1952 or after	JD	107⅛	3 5 4	2 19 3
Funding 4% Loan 1960-90	MN	118¾	3 7 4	2 18 0
Funding 3% Loan 1959-69	AO	104¼	2 17 6	2 15 0
Victory 4% Loan Av. life 23 years	MS	117	3 8 5	2 19 4
Conversion 5% Loan 1944-64	MN	121	4 2 8	1 18 8
Conversion 4½% Loan 1940-44	JJ	111½	4 0 9	2 4 8
Conversion 3½% Loan 1961 or after	AO	108⅜	3 4 7	3 0 5
Conversion 3% Loan 1948-53	MS	104¾	2 17 3	2 10 8
Conversion 2½% Loan 1944-49	AO	102½	2 8 10	2 3 7
Local Loans 3% Stock 1912 or after	JAJO	96½	3 2 2	—
Bank Stock	AO	377½	3 3 7	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	87½	3 2 10	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	96	3 2 6	—
India 4½% 1950-55	MN	117	3 16 11	3 0 0
India 3½% 1931 or after	JAJO	98¾	3 10 10	—
India 3% 1948 or after	JAJO	85½	3 10 2	—
Sudan 4½% 1939-73 Av. life 27 years	FA	118½	3 15 11	3 8 9
Sudan 4% 1974 Red. in part after 1950	MN	115½	3 9 3	2 14 7
Tanganyika 4% Guaranteed 1951-71	FA	114	3 10 2	2 16 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	110	4 1 10	2 13 5
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	110	3 12 9	3 5 8
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	104	3 12 1	3 7 4
Canada 4% 1953-58	MS	111	3 12 1	3 3 8
*Natal 3% 1929-49	JJ	101	2 19 5	—
*New South Wales 3½% 1930-50	JJ	101	3 9 4	—
*New Zealand 3% 1945	AO	102	2 18 10	2 15 0
†Nigeria 4% 1963	AO	115	3 9 7	3 3 7
*Queensland 3½% 1950-70	JJ	101	3 9 4	3 8 2
South Africa 3½% 1953-73	JD	109	3 4 3	2 16 6
*Victoria 3½% 1929-49	AO	102	3 8 8	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	98	3 1 3	—
*Croydon 3% 1940-60	AO	101	2 19 5	2 14 0
Essex County 3½% 1952-72	JD	108	3 4 10	2 17 10
Leeds 3% 1927 or after	JJ	96	3 2 6	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	107	3 5 5	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	82	3 1 0	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	96	3 2 6	—
Manchester 3% 1941 or after	FA	96	3 2 6	—
*Metropolitan Consd. 2½% 1920-49	MJSD	100½	2 9 9	—
Metropolitan Water Board 3% "A" 1963-2003	AO	99	3 0 7	3 0 8
Do. do. 3% "B" 1934-2003	MS	98½	3 0 11	3 1 1
Do. do. 3% "E" 1953-73	JJ	101	2 19 5	2 18 5
†Middlesex County Council 4% 1952-72	MN	115	3 9 7	2 17 6
† Do. do. 4½% 1950-70	MN	118	3 16 3	2 19 10
Nottingham 3% Irredeemable	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	106	3 6 0	3 3 11
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	115½	3 9 3	—
Gt. Western Rly. 4½% Debenture	JJ	127½	3 10 7	—
Gt. Western Rly. 5% Debenture	JJ	140⅜	3 11 2	—
Gt. Western Rly. 5% Rent Charge	FA	134½	3 14 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	132¼xd	3 15 6	—
Gt. Western Rly. 5% Preference	MA	120¼xd	4 3 0	—
Southern Rly. 4% Debenture	JJ	115	3 9 7	—
†Southern Rly. 4% Red. Deb. 1962-67	JJ	115½	3 9 3	3 2 4
Southern Rly. 5% Guaranteed	MA	132¼xd	3 15 6	—
Southern Rly. 5% Preference	MA	120¼xd	4 3 0	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

IF AND WHEN you are invited to advise a client as to the disposition of part of the estate for charitable purposes, please remember The Salvation Army. Information, Balance Sheets, etc., gladly given on application to the Secretary,

The Salvation Army

International Headquarters, 101, Queen Victoria St., London. E.C.4.

Every day of the year—*so much* depends on hearing.

WHAT ABOUT THOSE WHO CANNOT HEAR?

The National Institute for the Deaf is the only organisation engaged in promoting the complete welfare of the 40,000 deaf and dumb and the vast numbers of those who have been deafened by disease or accident.

Funds are urgently required for maintenance and extension of its humanitarian work.

LEGACIES help to make the work permanent. Subscriptions & Donations welcomed by the Secretary, A. J. Story.

NATIONAL INSTITUTE FOR THE DEAF

105, GOWER STREET, LONDON, W.C.1.

Telephone: HOLBORN 0602.

EDE & RAVENSCROFT

FOUNDED IN THE REIGN OF WILLIAM & MARY, 1689.

Robe Makers — Court Tailors

BY APPOINTMENT.

TAILORING—SOLICITORS' GOWNS

Wigs for Registrars, Town Clerks and Coroners.

93 & 94, CHANCERY LANE, LONDON, W.C.2.

The National Hospital, Queen Square, W.C.1,

For the Relief and Cure of Diseases of the Nervous System, including Paralysis and Epilepsy.

LEGACIES

ARE A VALUED HELP.

THE EARL OF HARROWBY, Treasurer.

YOU can help

to further the work begun by

CHARLES HADDON SPURGEON

by kindly reminding

Benevolently disposed clients, when making their Wills, of the special aim of the Orphanage.

The homes have sheltered and provided for **5,000** necessitous boys and girls, whom bereavement suddenly rendered homeless; and continue daily to benefit **420** fatherless children with a sound education, "developing the child capacity to live his own life richly and well" by uniting the mental, physical and spiritual training of all who are placed in their care.

The last Annual Report will gladly be sent on application to the Secretary,

SPURGEON'S ORPHAN HOMES

CLAPHAM RD., STOCKWELL, LONDON, S.W.9

Hon. President: REV. H. TYDEMAN CHILVERS.
Hon. Treasurer: ROBERT PERCIVAL HIGGS, ESQ.

THE SOLICITORS' JOURNAL

ESTABLISHED 1857. PUBLISHED WEEKLY.

Advertisement Rates

DISPLAYED ADVERTISEMENTS

Front Cover **20s.** per inch, Single Column width (2½ inches).
Other Pages **15s.** per inch, Single Column width (2½ inches). **£5** per Column (10 by 2½ inches).
Per Page Facing matter, **£15.** Other pages, **£12.** Half-page and Quarter-page, *pro rata.*

Auctioneers' Announcements **10s.** per inch, less 10 per cent. Single Column width (2½ inches).
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Special terms for a series in all cases.

RATES FOR SPECIAL NUMBERS BY AGREEMENT.

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Appointments Wanted	Thirty words, or less	**5s.**
	Per line after (average seven words)	**1s.**
	*Registration and Postage sent to Box No.	**1s.**
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	Per line after (average seven words)	**1s.**
	*Registration and Postage sent to Box No.	**1s.**
Articled Clerks	Charges as "Appointments Vacant."	
Practices and Partnerships for Sale or Wanted	Charges as "Appointments Vacant."	
Other Small Private Advertisements	Charges as "Appointments Vacant."	

**Replies received to BOX NUMBERS forwarded daily.*

N.B.—A special concession of three insertions for the price of two is made for advertisements under the above subjects.

The Proprietors reserve the right to refuse insertion without necessarily assigning any reason, or to vary the above rates.

Telegraph, Phone or Write your requirements to:

THE MANAGER, "THE SOLICITORS' JOURNAL," 29-31, BREAMS BUILDINGS, LONDON, E.C.4.

Telegrams: "Oyez, Fleet, London." Telephone: Holborn 1853.

HARRODS ESTATE OFFICES

TELEPHONE: KENS. 1490 AND SLOANE 1234. TELEGRAMS: ESTATE, c/o HARRODS, LONDON.
SURREY OFFICE: WEST BYFLEET.

By Order of the Public Trustee and his co-executrix. At Attractive Reserves.
Re The Rt. Hon. George Allardice Baron Riddell (deceased).

WALTON-ON-THE-HILL & TADWORTH

8 CAPITAL FREEHOLD MODERN BRICK AND TILED COTTAGES,

known as Nos. 1 to 6 (inclusive), CHEQUERS-CLOSE, also Nos. 43 and 47, CHEQUERS-LANE, WALTON-ON-THE-HILL, each containing Sitting room, living room, 3 bedrooms, bathroom, scullery and larder. Large garden. Co.'s gas and water, main drainage. Co.'s electricity installed to Nos. 23-28.
All let on Weekly Tenancies at a total rent of £301 12s. 0d. p.a.
Tenants paying Rates.

TERRACE OF EIGHT FREEHOLD MODERN BRICK AND SLATED COTTAGES,

known as Nos. 15 to 29 (odd, inclusive), MEADOW-WALK, WALTON-ON-THE-HILL, each containing living room, 3 bedrooms and scullery. Good garden. Co.'s gas and water. Main drainage.
All let on Weekly Tenancies at a total rent of £171 12s. 0d. p.a.
Tenants paying Rates (except Water Rate).

TERRACE OF 7 FREEHOLD MODERN BRICK AND SLATED COTTAGES,

known as Nos. 1 to 7 (inclusive), PROFFITS COTTAGES, TADWORTH, each containing living room, 3 bedrooms, bathroom and scullery. Small garden. Co.'s gas and water (electricity available). Main drainage.
All let on Weekly Tenancies at a total rent of £182 17s. 4d. p.a.
Tenants paying rates (except Water Rate).

FIRST-CLASS INVESTMENTS

HARRODS have received instructions to offer the above for SALE by AUCTION (unless previously sold privately) at the MARKET HALL, REDHILL, on WEDNESDAY, 25th MARCH, 1936, at 3 p.m. Auction Particulars, with Conditions of Sale and Order to View, may be obtained from the Solicitors, Messrs. SMITH, RUNDELL, DODS AND BOCKETT, 9, John-street, Bedford-row, W.C.1, and from the Auctioneers, HARRODS LTD., 62-64, BROMPTON-ROAD, S.W.1. Surrey Office: West Byfleet.

FLEURET, HAXELL, MARKS & BARLEY

Auctioneers, Surveyors and Valuers,
22, BLOOMSBURY SQUARE, LONDON, W.C.1.
Telephone: MUSEUM 2534 (Two lines).

Specialists in Licensed Property, Assessments, Monopoly Values, Redundancy & Compensation Claims, etc.
ESTABLISHED OVER 100 YEARS.

MORTGAGE LOANS 3¾% to 5%

Large Trust Funds available for Investment in Mortgages preferably on

Shop and Office Buildings and Housing Estates.

Please send full particulars to—

TRUSTEES' SURVEYORS,
23, BERKELEY SQUARE, LONDON, W.1.

FIELD & SONS

C. ROLAND FIELD, F.P.A.I., F.S.I.,
J. DONALD FIELD, M.A., LL.B., F.S.I., F.A.I.
(Established over 100 years.)

CHARTERED SURVEYORS,
AUCTIONEERS, VALUERS,
LAND & ESTATE AGENTS.

AUCTION SALES at the MART MONTHLY.

OFFICES:
54, BOROUGH HIGH ST., LONDON BRIDGE, S.E.1.
PALACE CHAMBERS, WESTMINSTER, S.W.1.

KNIGHT, FRANK & RUTLEY'S SALE ROOMS

FOR

JEWELS, FAMILY PLATE, PICTURES, FURNITURE, CHINA,

And all classes of Valuable Property.

SALES IN COUNTRY HOUSES. FIRE VALUATIONS.

Special Estate Rooms for Auctions of Real Property and Investments.

20, HANOVER SQUARE, LONDON, W.1.

Telephone: HOLBORN 0584 (3 lines).

WEATHERALL, GREEN AND SMITH,

Chartered Surveyors, Valuers,
Auctioneers, and Estate Agents.
22, CHANCERY LANE, W.C.2.
SALES BY AUCTION,
VALUERS FOR ESTATE DUTY OF REAL ESTATE AND FURNITURE.
RATING SURVEYORS. COMPENSATION VALUERS.
VALUERS OF LICENSED PROPERTY.

PERIODICAL SALES.
ESTABLISHED 1843.

H. E. FOSTER & CRANFIELD

conduct PERIODICAL SALES of
REVERSIONS (Absolute and Contingent),
LIFE INTERESTS and ANNUITIES,
LIFE POLICIES,
Shares and Debentures,
Mortgage Debts and Bonds, and
Kindred Interests,
on the FIRST and THIRD THURSDAYS in each month throughout the year, at THE LONDON AUCTION MART, 155, Queen Victoria-street, E.C.4.

Offices: 6, Poultry, London, E.C.2. Telegrams: "Invariably, Stock, London." Tel. No. City 1451 (3 lines).

PERIODICAL PROPERTY AUCTIONS.

H. E. FOSTER & CRANFIELD

beg to announce that their PROPERTY AUCTIONS will be held at THE LONDON AUCTION MART, 155, Queen Victoria-street, E.C.4.

Vendors, solicitors and trustees having properties for sale are respectfully invited to communicate with the Auctioneers, at their Offices, 6, Poultry, London, E.C.2. Telegrams: "Invariably, Stock, London." Tel. No. City 1451 (3 lines).

EALING.

INCOME-PRODUCING FREEHOLD INVESTMENT.

FOR SALE IN THREE SECTIONS.

RECENTLY-BUILT PROPERTY COMPRISING

22 SHOPS 11 HOUSES
44 FLATS 37 GARAGES

SHOPS. 111–153 (ODD), PITSHANGER-LANE.
FLATS. 1–44 (CONSEC.), KENMURE-MANSIONS.
HOUSES. 21, 22 & 26–31 (CONSEC.), QUEENS WALK; 1–5 (ODD), ALBERT ROAD.
GARAGES. CASTLEBAR-MEWS.

The shops and flats form a compact parade; and the houses are modern and semi-detached, with the exception of 1–5, Albert-road, which form a terrace. The garages are brick-built lock-ups.

The whole represents an *actual* and *estimated Gross Income* of about

£8,285 PER ANNUM.

To be offered by AUCTION by Messrs.

KNIGHT, FRANK & RUTLEY

in the Hanover-square Estate Room, on Thursday, 5th March, 1936, at 2.30 p.m. (unless previously disposed of).

Solicitors:—Messrs. Bartlett & Gluckstein, 199, Piccadilly, W.1.

Auctioneers:—Messrs. Knight, Frank & Rutley, 20, Hanover-square, W.1.

BRIXTON.

FREEHOLD GROUND RENTS

amounting to £302 10s. 0d. per annum, well secured upon 43 Villa Residences, situate at Arodene Road and Leander Road, Brixton Hill, S.W.2.—Messrs.

DRIVERS, JONAS & CO.

will offer the property by AUCTION, in Lots (unless previously sold by Private Treaty), at the London Auction Mart, 155, Queen Victoria Street, E.C.4, at 2.30 p.m. o'clock, on MONDAY, MARCH 30th, 1936.

Particulars of Messrs. Bischoff, Coxe, Bischoff and Thompson, Solicitors, 4, Great Winchester Street, E.C.2, and of Messrs. Drivers, Jonas & Co., Chartered Surveyors, Land Agents and Auctioneers, 7, Charles Street, St. James's Square, S.W.1. (Telephone, Whitehall 3911.)

By Direction of the Liquidator.

FOR OCCUPATION OR INVESTMENT.

IMPORTANT CITY PROPERTY.

110, QUEEN VICTORIA STREET, E.C.4.

Spacious Premises on
GROUND FLOOR, BASEMENT AND FOUR UPPER FLOORS.
Area 7,850 sq. ft.
ELECTRIC LIFT. GOOD LIGHT.
REAR ENTRANCE.

To be submitted for SALE by AUCTION by

HERRING, SON & DAW,

at THE MART, 155, QUEEN VICTORIA STREET, E.C.4, on TUESDAY, 17TH MARCH, 1936, at 2.30 p.m.

Particulars and Conditions of Sale may be obtained from Liquidator, W. J. Jackson, Esq., Bilbao House, New Broad-street, E.C.2, the Solicitor, J. C. Brookhouse, Esq. 8, Queen-street, E.C.4, or from the Auctioneers' Offices, 100c, Queen Victoria-street, E.C.4. City 7068; or 117, Victoria-street, S.W.1. Victoria 8425.

H. J. BLISS & SONS

MONTHLY SALES at THE AUCTION MART.

Special attention also given to

Valuations; Specifications; Dilapidations; Management of House Property; Compensation Claims; Sales by Private Treaty.

106, Cheapside, E.C.2 & 164, Bethnal Green Rd., E.2.

SALTER, REX & CO.

Auctioneers, Surveyors & Valuers
311, KENTISH TOWN ROAD, N.W.5,
and 121, CHEAPSIDE, E.C.2.

'Phones: GULLIVER 1085 (4 lns.) & NATIONAL 8394 (2 lns)

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